



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201311028**

Release Date: 3/15/2013

Date: December 21, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Uniform Issue List: 501.00-00; 501.33-00; 503.00-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code ("Code") § 501(a) as an organization described in Code § 501(c)(3).

We made this determination for the following reason(s):

You have not described your operations in sufficient detail to permit a conclusion that you clearly meet the requirements of § 501(c)(3). See Rev. Proc. 2012-9, 2012-2 I.R.B. 261. Therefore, you have failed to establish that you will operate exclusively for exempt purposes as required by § 501(c)(3). Furthermore, you have not established that you will not serve private interests:

Because you do not qualify for exemption as an organization described in Code § 501(c)(3), donors may not deduct contributions to you under Code § 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.

If you decide to contest this determination under the declaratory judgment provisions of Code § 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code § 7428 does not stay the requirement to file returns and pay taxes.

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.

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, 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: March 5, 2012

Uniform Issue List:

501.00-00

501.33-00

503.00-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

Taxpayer =  
Founder =  
State =  
Date1 =  
Technology =  
Equipment =  
For-Profit1 =  
For-profit2 =  
For-profit3 =  
For-Profit4 =  
For-Profit5 =  
For-Profit6 =  
For-Profit7 =  
For-Profit8 =  
For-Profit9 =  
For-profit10 =  
Family =

Dear :

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

Facts:

You, Taxpayer, are a not-for-profit corporation organized under the laws of State. You filed a Form 1023 seeking exemption under § 501(c)(3). Your Articles of Incorporation state that you were formed to "support the development of practical laser Technology." You will "promote the replacement of conventional Technology with laser Technology for use in Equipment."

According to your narrative description, you were formed "exclusively for charitable and educational purposes. Specifically, [you] have been formed to (a) educate the public on subjects useful to the individual and beneficial to the community, and (b) develop advanced technology for the benefit of the environment." You state that you have one program in furtherance of these purposes, which is to promote the development of laser Technology for use in Equipment. In your Date1 response you state that your purpose is "educating and promoting low emission fuel efficient technologies for use in Equipment."

Your initial education efforts consist of review and posting on your website "over 36 technical papers related to the subject [of laser Technology]." You have also provided that most of your education would occur online and via word of mouth. Additional examples of your educational program include "presentations on laser Technology and other fuel efficient technologies to various groups and individuals." You also plan to "provide demonstrations of these technologies to local and national audiences in the future." For example, you have plans for a mobile exhibit that will feature a street legal electric golf cart that is outfitted with Equipment from For-Profit1.

You submitted a white paper on laser Technology. This paper provides information about For-Profit1 and For-Profit2. The paper touts the accomplishments of For-Profit1, stating that "For-Profit1's . . . technologies provides the following benefits: reduces fuel consumption by greater than 40% (any fuel), burns virtually any fuel (e.g. gasoline, diesel, kerosene, military fuels), reduces engine weight. . . , reduces emissions . . . , increases vehicle/aircraft power to weight ratio, and reduces manufacturing costs." The paper also states that For-profit2 has "developed core technology for a new generation of high peak power eye-safe micro-lasers." Finally, the paper states that "[w]hen you combine For-Profit1's engine and For-Profit2's Technology you get a light weight, clean burning, super high efficiency multi-fuel" Equipment.

You also submitted scientific papers that were authored by your Founder. One of these papers was submitted twice. The first copy submitted lists For-Profit3 following the name of the author. However the second copy lists your name. In all other regards, the papers are the same. Some of the other papers you submitted list the names of various for-profit entities. This includes a "R&D proposal for For-profit1 written by [you]." Another paper states that you "will contract research and development of Technology traceable to production designs that are practical and cost effective in terms of Equipment applications."

You do not conduct laboratory research. You state that you perform R&D consulting and scientific literature research at no charge to "those organizations involved in advancing the state-of-the-art of Equipment technology." You state that you will make distributions to For-Profit4, For-Profit5, For-Profit6, For-Profit7, For-Profit8, and For-Profit9. You do not intend to make claims on any patents, copyrights, formulas or processes that result from any of your R&D grants.

You also indicated that you will select a research and development laboratory to perform laser Technology development work. In selecting organizations, you state that you will review the following: "technical prowess and history of technical achievement," "R&D management capabilities and past accomplishments," "[p]otential high-tech manufacturing capabilities," and "[m]arketing and sales potential in terms of expertise and channels of distribution." You submitted example contracts for supplies and services that you said is an example R&D contract. This contract is for the purchase of a specific quantity of laser Technology manufactured over a period of time and lists you as the hypothetical buyer. According to your response of Date1, you will not provide direct contracting services. Rather you will "facilitate

R&D contracting between various government and private organizations that are strategically positioned to help advance the state of the art in Equipment technology.”

In addition to providing grants to for-profit entities, you have other relationships with some of these organizations. You state that you “helped put the “President of For-profit1 . . . in touch with For-profit10 . . . .” As a result of this contact, For-Profit10 will produce items utilizing technology from For-profit1. Your website provides links, which you claim are educational, to the websites of several for-profit entities. These entities design and manufacture items which in some way may be related to the technology that you promote. Your website also reiterates the benefits of For-profit1’s Equipment technologies. Finally, three of your six directors are employees of For-Profit3, this includes Founder who is also a member of Family. You describe For-profit3 as a “old Family business that has no business interest in [you] and has restricted its relation to [you] as a R&D lab resources and as a potential financial donor to [you].”

Law:

Section 501(c)(3) of the Code provides that an organization may be exempt from tax if it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals and “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 provides that in order to be exempt under § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show 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) provides that the term “charitable” is used in its generally accepted legal sense and includes the relief of the poor and distressed or underprivileged; advancement of religion; advancement of education or science; erection or maintenance of buildings, monuments, or works; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions, to eliminate prejudice and discrimination, to defend human and civil rights secured by law, or to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3) provides that the term “educational” relates to the instruction or training of the individual for the purpose of improving or developing his capabilities, or the instruction of the public on subject useful to the individual and beneficial to the community. The regulation also provides four examples of educational organizations. Example 1 states that an organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on is educational if it otherwise meets the requirements of § 501(c). Example 2 provides that an organization whose activities consist of presenting public discussion groups, forums, panels,

lectures, or other similar programs is educational if it otherwise meets the requirements of the § 501(c). Such programs may be on radio or television. Example 3 states that an organization which presents a course of instruction by means of correspondence or through the utilization of television or radio is educational if it otherwise meets the requirements of § 501(c). Example 4 provides that museums, zoos, planetariums, symphony orchestras, and other similar organizations are educational if they otherwise meet the requirements of § 501(c).

Section 1.501(c)(3)-1(d)(5) provides that the term "scientific" includes the carrying on of scientific research in the public interest. Scientific research will be regarded as carried on in the public interest if the results of such research (including any patents, copyrights, processes, or formulae resulting from such research) are made available to the public on a nondiscriminatory basis; or if the research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or if such research is directed towards benefiting the public. Examples of research that is regarded as carried on in the public interest includes scientific research carried on for the purpose of aiding in the scientific education of college or university students; scientific research carried on for the purpose of obtaining scientific information which is published; scientific research carried on for the purpose of discovering a cure for a disease; or scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research does not include activities of a type ordinarily carried on as incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Rev. Rul. 65-1, 1965-1 C.B. 226, describes the operations of an organization formed to foster the development and design of agricultural machinery, including the development of new labor saving methods and ideas. The ruling held that the organization's primary activity of aiding in the development of the farm machinery by the disbursement of grants did not constitute scientific research because the development of machinery was equivalent to the "designing or construction of equipment" that is incident to a commercial operation. The ruling further determined that the development of a new machine, the patents of which may be licensed on a restrictive basis to selected manufacturers, was directed toward benefiting those particular manufacturers and any benefit to the public was considered indirect.

In Rev. Rul. 68-14, 1968-1 C.B. 243, an organization that planted trees in public areas and assisting municipal authorities in their programs to plant trees and keep the city clean was lessening the burdens of government. The organization's informational program directed to the public, architects, and builders was deemed educational. And, the overall effect of the organization's activities was to combat community deterioration. Accordingly, the organization was exempt from tax under § 501(c)(3).

In Rev. Rul. 72-560, 1972-2 C.B. 248, an organization that provided information to the public concerning environmental problems caused by solid waste materials and the advantages of recycling such materials, was found to be instructing the public on subjects useful to the individual and beneficial to the community. The recycling of the waste materials is an essential element in the organization's efforts to combat environmental deterioration, since it prevents the pollution of the environment caused by the usual disposition of these materials.

In Rev. Rul. 76-204, 1976-1 C.B. 152, an organization was formed for the purpose of preserving the natural environment. The organization accomplished this purpose by acquiring and

maintaining ecologically significant and undeveloped land such as swamps, marshes, forests, wilderness tracts, and other natural areas. The organization worked closely with Federal, state, and local government agencies, and private organizations that were also concerned with environmental conservation. The ruling reasoned that by preserving "ecologically significant undeveloped land, the organization is enhancing the accomplishment of express national policy of conserving the nation's unique natural resources." Thus, the ruling concluded that the "organization is advancing education and science and is benefiting the public in a manner that the law regards as charitable."

An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. Founding Church of Scientology v. United States, 188 Ct. Cl. 490 (1969), cert. denied, 397 U.S. 1009 (1970).

Analysis:

Organizations described in § 501(c)(3) must be organized and operated exclusively for one or more exempt purposes such as charitable, educational, or scientific. § 1.501(c)(3)-1(a)(1). You state that you were formed for charitable and educational purposes. However, your activities are neither educational nor charitable. Additionally, your activities may provide prohibited private benefit to for-profit organizations. Therefore you do not meet the requirements for recognition of exemption under § 501(c)(3).

You first state that you are organized for charitable purposes, namely preservation of the environment. In the code and regulations, charitable is used in its generally acceptable legal sense. § 1.501(c)(3)-1(d)(2). Organizations that promote or protect the environment may be considered charitable and recognized as exempt. See Rev. Rul. 68-14, supra (planting trees to combat community deterioration); Rev. Rul. 72-560, supra (providing educational information on solid waste recycling); Rev. Rul. 76-204, supra (acquiring and preserving ecologically significant land). However, your activities are significantly different from those organizations described in the revenue rulings.

The organizations described in each of the above revenue rulings provided a direct environmental benefit to the public as a result of its activities. However, any potential environmental benefits from your activities are indirect and tangential. Unlike the organization in Rev. Rul. 76-204, supra, you do not engage in any activities that directly generate environmental benefits. Rather you provide R&D consulting to organizations engaged in developing laser Technology, you "facilitate R&D contracting between various government and private organizations . . . .", and you present and demonstrate technology developed by for-profit organizations. These activities do not, in and of themselves, preserve or protect the environment in a manner that is sufficient for § 501(c)(3) purposes.

You also state that your activities are educational. Section 1.501(c)(3)-1(d)(3) defines educational as referring to the instruction or training of an individual for the purposes of improving or developing the individual's capabilities or as the instruction of the public on subjects that are useful and beneficial to the community. Examples of educational organizations under the regulations include colleges and primary schools, public discussion groups that have panels, correspondence schools, and museums, zoos, and similar organizations. You do not meet the definitions of an educational organization and are not comparable to any of the examples contained in the regulations.

You stated that most of your education would occur online and via word of mouth. You further state that some of your education consists of posting "over 36 technical papers related to the subject [of laser Technology]" on your website." As examples of these technical papers, you submitted a white paper on laser Technology which promotes two for-profit organizations. You also submitted scientific papers that were authored by your Founder. One of these papers was submitted twice with the first copy listing For-Profit3 and the second copy listing your name. Some of the other papers you submitted list the names of various for-profit entities. This includes a "R&D proposal for For-profit1 written by [you]." Another paper states that you "will contract research and development of Technology traceable to production designs that are practical and cost effective in terms of Equipment applications."

Additional examples of your educational program include "presentations on laser Technology and other fuel efficient technologies to various groups and individuals" and the potential for a mobile exhibit that is outfitted with Equipment from For-Profit1. None of the materials submitted by you is sufficient to constitute an educational purpose within the meaning of the Code and regulations. At the most, these materials serve to benefit the informational needs of a very narrow group of individuals and for-profit businesses, whose long-term financial interests may be enhanced by supporting the development of Technology.

It should also be noted that while you state you are performing research and development work, you also do not qualify for exemption as a scientific organization. According to § 1.501(c)(3)-1(d)(5), the term "scientific" includes the carrying on of scientific research in the public interest. Examples of research that is regarded as carried on in the public interest includes scientific research carried on for the purpose of aiding in the scientific education of college or university students; scientific research carried on for the purpose of obtaining scientific information which is published; scientific research carried on for the purpose of discovering a cure for a disease; or scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Id. Scientific research does not include activities of a type ordinarily carried on as incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc. Id.

You do not conduct scientific research in the public interest. Rather your activities are coordinating and promoting the development of laser Technology by for-profit organizations. You do not conduct laboratory research. You state that you perform R&D consulting and scientific literature research at no charge to "those organizations involved in advancing the state-of-the-art of Equipment technology." You indicated that you will select a research and development laboratory to perform laser Technology development work and you submitted sample R&D contracts.

In Rev. Rul. 65-1, 1965-1 C.B. 226, an organization that was formed to foster the development and design of agricultural machinery, including the development of new labor saving methods and ideas was determined to be not exempt. The ruling held that the organization's primary activity of aiding in the development of the farm machinery by the disbursement of grants did not constitute scientific research because the development of machinery was equivalent to the "designing or construction of equipment" that is incident to a commercial operation. Similarly, your activity of aiding in the development of laser Technology and its application to Equipment is the equivalent of "designing or construction of equipment" that is incident to a commercial operation."

Finally, an organization will also not be organized and operated exclusively for exempt purposes if it is 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. § 1.501(c)(3)-1(d)(1)(ii). Inurement of net earnings may occur through a wide range of means, and is not limited to the actual distribution of dividends or payment of excessive salaries. Founding Church of Scientology v. United States, 188 Ct. Cl. 490 (Ct. Cl. 1969). You are operated primarily to benefit private parties. Based on the facts you provided, you operate primarily to benefit private interests in various ways, contrary to the requirement set forth in § 1.501(c)(3)-1(d)(1)(ii).

Various for-profit enterprises benefit substantially or stand to benefit substantially from your operations. Your website specifically praises the work of For-Profit1 and promotes its technological developments. You have facilitated relationships between various for-profits that have led to commercial contracts between those organizations. Three of your directors are employees of For-Profit3. And your Founder is a member of Family, which created For-Profit3. These relationships all present questions of potential private benefit. The burden is on you to demonstrate that you are not organized or operated for the benefit of private interests. § 1.501(c)(3)-1(d)(1)(ii). You have not met this burden. Therefore you do not qualify for recognition as an organization exempt under § 501(c)(3).

Conclusion:

Based on the information provided in your Form 1023 and supporting documentation, we conclude that you are not operated exclusively for purposes described in § 501(c)(3) of the Internal Revenue Code.

Accordingly, you do not qualify for exemption as an organization described in § 501(c)(3) of the Internal Revenue Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Internal Revenue 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.

**Your protest statement should be accompanied by the following declaration:**

***Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.***

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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 protest 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 this address:

You may also 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 & Agreements