



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **201314046**  
Release Date: 4/5/2013

Date: August 23, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.05-05; 501.33-00

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

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: 11/21/12

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**Legend:**

B = Owner/President

S = Name of Corporation

T = Name of Corporation

W = Date of Incorporation

Y = State

**UIL Nos:**

501.03-05

501.33-00

Dear

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

**Issues**

- 1) Are private, rather than public, interests being served, therefore prohibiting you from qualifying for exemption under section 501(c)(3) of the Code? Yes, for the reasons outlined below.

- 2) Are you operating exclusively for exempt purposes as described in Section 501(c)(3) of the Code? No, for the reasons outlined below.

## **FACTS**

Your founder, B, is constructing a "smart" home where she will reside. A smart home is generally defined as a house equipped with a variety of technological tools that automate and enhance living. B became widowed and disabled following a car accident. B's life dream is to develop the smart house to accommodate disability related conditions such as reduced mobility or range. In building B's dream home, B spent more money than planned. With B's savings depleted, B sought help through grant money. B located S, a for profit grant writing corporation, on the internet. After contacting S, B was referred to the services of T, a similar grant writing corporation who promised grants could be secured through a nonprofit foundation. B entered an agreement with T for services and paid a fee of approximately \$ . T secured your employer identification number, prepared your Articles of Incorporation and Bylaws, completed a Form 1023 for you and provided other documents such as a business plan and financial projections.

You are incorporated in the State of Y on W. Your purpose and dissolution clauses contain the requisite language for section 501(c)(3) organizations.

Your initial governing body included B, B's brother, B's son, B's friend, an employee of S, and the contractor for B's home. The employee of S and the contractor were subsequently removed from your governing body leaving only B, her relatives and her friend. .

Your activities will consist of introducing seniors, singles, and students to various "smart" and "green" technologies. Your goal and the smart house concept is to show the costs of building a home using various green ideas, smart ideas, and energy efficient ideas. Once construction of B's home is finished you hope to have people view the house on a regular basis to show the public how houses can be built to allow seniors to be more independent. The home is a single family dwelling with one bedroom and 2.5 baths. The house will showcase technology and design. B's home will feature equipment/technology related to home automation, energy conservation, and various items to accommodate elderly/disabled individuals. B will continue to live in the house as caretaker "to protect the investment" and to clean and maintain the home. B will serve as the executive director and will work in the office daily arranging home demonstrations, seminars and charity events. B will market the smart house concept to the public, educational institutions, medical professionals and senior centers. B does not anticipate compensation during your startup phase. You plan on adding improvements to technology for demonstration purposes. The grounds will be maintained by you. A portion of the home will be rented to B's friend who is a board member.

You list the following objectives:

- Develop a 'living' prototype smart home open for museum-like visits to educate seniors, individuals with mobility challenges, service organizations and contractors on home automation, energy efficiency and accessibility that will enable them to affordably create their own 900 square foot home.
- Partner with education institutions to provide technology students with a real life working classroom that encourages invention and/or use of new technologies in home automation, energy efficiency and accessibility for seniors and people with mobility challenges.
- Raise approximately \$                    to complete construction of B's smart house. Giving opportunities will include: corporate sponsorships, naming opportunities, grants, and individual giving.

You plan on conducting fundraising in all states. Progress on the home has moved slowly due to funding challenges. All of B's savings have been spent constructing the home and B is seeking financial help through you. Your executive summary shows you have requested over \$                    of funding. B has contacted numerous organizations requesting grants, gifts or money.

Your estimate the total cost for B's home of about \$                    . B paid approximately \$                    for the frame, roof, electrical, windows, and doors. An additional \$                    is needed to complete the home construction including electronic equipment. Other expenses include maintenance, office, advertising and additional equipment. Monthly utilities will be paid by B until you can obtain funds to cover the costs. B will lease office space and a garage to you for annual rent of \$                    . The lease will include permission for you to add smart house technology as a leasehold improvement as new technology emerges. The contract between T and B states that an additional amount of round \$                    is due when half of the desired funding is awarded.

## **LAW**

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

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. Thus, to meet the requirement of this subsection, 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.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 67-5, 1967-1 C.B. 123 held a foundation controlled by the creator's family, operated to enable the creator and his family to engage in financial activities beneficial to them does not qualify for exemption.

Rev. Rul. 69-279, 1969-2 C.B. 152 held that an irrevocable inter vivos trust which provides a fixed percentage of income to the settler with a balance to charity is organized and operated for private interests and thus is not exempt.

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.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

In KJ's Fund Raisers, Inc. v. Commissioner, 74 T.C.M. 669 (1997), the court held that a nonprofit organization, which sold lottery tickets on the premises of a for-profit business had a substantial non-exempt purpose to enhance the profits of the for-profit business. The owners of the for-profit business formed the nonprofit organization purportedly to raise funds for distribution to charitable causes. The nonprofit's lottery tickets were sold during the regular business hours by the owners and employees of the for-profit business. The owners of the for-profit initially controlled the board and later indicated that it would vest control in unrelated parties. The nonprofit opined that the organization "would fold without the original founders of the organization as officers." In finding that the nonprofit had a substantial nonexempt purpose, the court reasoned that the owners of the for-profit were in a position to control the nonprofit. Additionally, the court found that the publicity received by the for-profit was a significant benefit.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application

for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes.

## **APPLICATION OF LAW**

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable, educational, or religious purposes. Specifically, you were formed for the purpose of obtaining grant funding to use in completing the construction of B's home. This results in your earnings inuring to the benefit of B.

You do not meet the operational test under section 1.501(c)(3)-1(c)(2) of the regulations because your net earnings inure in whole or in part to the benefit of B. You were created to secure grants for B. B will use the grants to complete construction of her home.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you serve the private interests of your founder, B. You were formed to secure funds to complete construction of B's home, maintain the home and grounds and provide technology equipment. The benefit the public receives in viewing the home and learning about its construction and operation does not overcome the private benefit to B.

Even though B's home is designed as a prototype home for seniors and the disabled, such as the distressed or underprivileged described in section 1.501(c)(3)-1(d)(2) of the regulations, your overriding purpose is to complete construction of B's home. Any benefit to the poor, distressed or underprivileged is incidental to the benefit received by B.

You are similar to Rev. Rul. 67-5 because you too are controlled by your creator, B, and are formed to engage in financial activities beneficial to B.

Likewise, you are similar to Rev. Rul. 69-279 because funds will be used to benefit B in the construction and maintenance of her home and the balance of funds may be used to educate the public on the benefits of smart homes.

You are similar to Better Business Bureau, supra, because you too were formed for a more than insubstantial nonexempt purpose. Namely, you were formed to secure grants which are available only to nonprofit corporations to benefit B. The facts show funds received are to be used to construct, improve and maintain B's property.

Like the organization in Basic Bible Church you are operated for the benefit of B, your founder, who as the sole caretaker of the home has complete control over your financial affairs.

You are similar to KJ's Fund Raisers, Inc. in that you too have a substantial non exempt purpose to benefit an insider, B, who controls your operations.

Similar to the organization in New Dynamics Foundation you also operate for the private benefit of your founder, B.

### **APPLICANT'S POSITION**

The only activities performed are the tasks of incorporating, establishing a bank account , filing Form 1023 and printing flyers and brochures.

You will pay for cost of creating a website and for costs of smart house technologies that do not provide an unjust benefit to B. Further to protect your investment B has been designated as the caretaker of the facility.

Your mission is to educate seniors about smart house technologies, technology and innovations in home design that provide self managed and convenient living for Wheel chair bound and other seniors desiring to live independently.

You will educate seniors about the smart house by recruiting volunteers and soliciting charitable donations. The house is a showcase of smart, recyclable and green ideas.

Volunteers will show the home to individuals during daily visiting hours. (Monday – Friday 10:00am – 3:00pm). Volunteers will solicit charitable donations and recruit additional volunteers through special events that will educate individuals on smart house technology. Additionally, volunteers will assist in “getting the word out” to seniors through communications with the public and the distribution of printed material.

Funds will be used to cover the costs of producing educational materials, an educational website, holding special events to recruit volunteers, and to cover the costs of smart technologies added to the home, for demonstration purposes.

B will reside at the residence as the caretaker of the facility and will assist in providing tours. B will not be compensated by you.

Charitable donations will not be used for any costs that would unjustly benefit B. Charitable donations will not be used for the following:

- Costs associated with the initial construction of the home.
- Costs associated with any debt incurred in the construction
- Costs associated with major improvements to the home

- Costs associated with routine maintenance of the home
- Costs associated with the utilities of the home
- Costs associated with major improvements that would unjustly benefit B

Additionally, the terms of the lease agreement between B and you has been amended. You will not incur any cost for repairs, maintenance or utilities, except for maintenance that may be required as a result of the foot traffic generated by visitors to the home and any additional liability insurance that may be desired to protect your interest.

### **SERVICE'S RESPONSE TO APPLICANTS POSITION**

Although you claim donations will not "unjustly" benefit B you have not substantiated your claim nor have you explained how you define "unjustly." The facts show you were formed to secure grants for the benefit of B. Even though you now claim donations will not be used for the "initial" construction, debt incurred with the construction, major improvements, routine maintenance and utilities the facts continue to reveal funds will benefit B such as through technology improvements and upgrades to the home Also B will continue to live in the home, be the caretaker and will have sole control over all financial matters. Any benefit to B is inurement and impermissible.

### **CONCLUSION**

The facts clearly show you are serving the private interests of B, rather than public interests. You were formed to secure grants for B and further the construction and operation of her home. Any benefit to the public is incidental to benefit received by B. In addition, you are not operated for an exclusive charitable purpose as a more than insubstantial purpose is to benefit B. Accordingly, we conclude that you do not qualify for exemption under 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, Group 7830  
Room 4-504  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations, Group 7830  
550 Main Street, Room 4-504  
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 O Paz  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure: Publication 892