



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201323037**
Release Date: 6/7/2013
Date: 3/11/13
UIL Code: 501.03-30
501.36-04

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.

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: January 17, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

B = State
C = Date

UIL

501.03-30
501.36-04

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 operate in a commercial manner? Yes, for the reasons set forth below;
- Do you operate exclusively for a 501(c)(3) purpose? No, for the reasons set forth below;

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

Facts

You incorporated in B on C for charitable purposes.

Your Bylaws state your mission is "to help those in need by empowering people to support charities through simple transactions and unselfish acts."

Your purpose is to build, maintain and market a website, which provides a service to charities giving them a new way to raise funds, as well as service to individuals wishing to support nonprofits that connects them with each other and facilitates communication and financial giving.

Your website helps raise funds for charity through simple transactions. Individuals can post on your site details of goods or services they are willing to perform in exchange for a donation to a charity. Your clients can search through the proposals looking for those willing to perform a service they need in exchange for a donation to a charity they would like to support.

Anyone can create an account on your website and offer goods or services. Your site works like other similar websites that match vendors and buyers except that when individuals have concluded their business the funds are given to a charity, instead of being given to the seller or provider of the service.

When a client finds the right proposal they can contact the seller or provider through the site, conduct the transaction, and eventually make a donation to the charity of their choice. The charities approved by the board of directors will be listed on the website.

You will use a payment service. When clients make donations they do so through the payment service. The charity will also have to set up an account to receive these payments.

You will charge a fee for every donation made by your clients through the site to help cover your costs. You will raise additional funds through individual and corporate donations.

In a typical transaction % is the value of the item (goods or services) and % is your fee which you will use for operational expenses. Both you and the charity will pay the respective fees charged by the payment service.

You provided an example of how your program works. Your example described an individual posting an offer on your website offering to wash a car in exchange for a donation of \$ to a charity. An individual needing a car wash locates the offer on your website, agrees to the terms, schedules and receives the car wash and makes the

\$ payment through the payment service. Of the \$ payment you receive %
or \$. Of the \$ you pay \$ to your payment service. Likewise the charity
receiving the payment also pays an equal percentage of the amount it receives to the
payment service.

Donors of physical items donated in exchange for payments to a charity will be able to
deduct the fair market value of the item. You do not expect that individuals volunteering
their time or services will be able to deduct the value of their efforts.

You will build, maintain and market your website. Your directors will serve as
moderators. You will market your website through email campaigns, social media and
online ads. You will primarily raise funds in B and will welcome donations and
contributions from all over the country.

You allocate % of your time and resources to maintaining your website, 5% to
fundraising activities, % to administrative activities and % to marketing and public
relations.

You plan to hire a web developer and an executive director who has experience in
systems administration and web development. Your president and vice president are
individuals with degrees in computer science and have several years experience in the
areas of web development and as a programmer/server administrator. You are
currently governed by 3 individuals who serve as your president, Vice-president and
secretary.

You provided budgets showing your income coming from gifts, grants and donations
and from fees for services. You report contributions paid out, salaries, accounting fees,
marketing and website related fees as expenses.

Law

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

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify
under section 501(c)(3) of the Code, an organization must be both organized and
operated exclusively for one or more exempt purposes. If an organization fails to meet
either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization operates
exclusively for exempt purposes only if it engages primarily in activities that accomplish

exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the Regulations provides that an organization may meet the requirements of section 501(c)(3) if it operates a trade or business that is in furtherance of its exempt purpose but not if it is operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513 of the code.

Revenue Ruling 69-528, 1969-2 CB 127, held that an organization regularly carrying out an investment service business that would be an unrelated trade or business if carried on by any exempt organization on whose behalf the organization operates, is not exempt under section 501(c)(3).

Revenue Ruling 72-369, 1972-2 CB 245, held 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 were provided at cost and solely for exempt organizations was not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code.

Revenue Ruling 76-442, 1976-2 C.B. 148 held that A nonprofit organization whose primary activity is the offering of free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity as part of their overall tax and estate planning does not qualify for exemption under section 501(c)(3) of the Code. The organization is providing commercially available services to individuals who can afford them. The fact that gifts to charity are contemplated does not convert the organizations assistance into a charitable activity or one that promotes social welfare within the meaning of the regulations.

Revenue Ruling 78-132, 1978-1 C.B.157 held that a community cooperative organization formed to facilitate the exchange of personal services among members was operating primarily for the private benefit of its members and was not exempt from tax as a social welfare organization.

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. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting 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 by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

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

Application of Law

You are not described in section 501(c)(3) of the Code or Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations because you are not operated exclusively for charitable, educational or other exempt purposes. You act as a facilitator of commerce between service/goods providers and recipients. As facilitator you receive 15% as a fee for your service.

You are not described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities is devoted to non-exempt purposes. Your primary purpose is to provide a website to connect vendors of goods and services with their recipients for a fee. The fact that recipients make payments to charity in exchange for the services or goods received does not overcome your non exempt purposes.

You are not described in Section 1.501(c)(3)-1(e)(1) of the regulations because your primary purpose is the carrying on of the business of operating a website where you provide opportunities for vendors of goods and services to advertise their services and match clients who are in need of such goods and services. Your primary source of

income is from the fees you earn from each transaction that takes place through your website. Like a commercial business your expenses include salaries, marketing and website related fees.

You are similar to the organization described in Revenue Ruling 69-528 because you are regularly carrying on a business for a fee.

You are similar to Revenue Ruling 72-369 because you are providing a web based service of linking service/goods providers with clients. In exchange for your services you receive a % fee. Providing such services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that clients remit a payment of the value of the goods or service received to charity is not sufficient to characterize your activity as charitable.

You are similar to Revenue Ruling 78-132 because you too are formed to facilitate the exchange of services among individuals.

You are similar to Revenue Ruling 76-442 because your primary activity is the operation of a trade or business ordinarily carried on by for-profit businesses.

Like the organization in Airlie, your activity evidences a commercial nature and purpose and involves the operation of a commercial web site where any one can place their products and services for sale. You will advertise and market the website and keep a percentage of each transaction as your fee. Like B.S. W. Group, your activities of providing a website where vendors and their clients can match their needs for goods and services constitutes the conduct of a trade or business ordinarily carried on by commercial ventures for a profit. The fact that a portion of the proceeds is donated to charity does not change the inherent commercial nature of the transactions

Like Better Business Bureau, *supra*, you too have a substantial non-exempt purpose of operating in a commercial manner.

Applicant's Position

You applied for exemption because you will be soliciting traditional monetary donations from individuals to help cover your costs and the costs of running your website. These costs will supplement the receipts generated on the website itself, which is the percentage of each transaction that you earn.

Services response to Applicant's Position

Providing a website service where your vendors and clients can exchange goods and services is not charitable within the meaning of section 501(c)(3) of the Code. In

addition the operation of such a website offering goods and services, the marketing of the website to the general public and the payment of a percentage of each transaction to meet your operating expenses indicate that your operations are not different from a commercial venture. Further using donations to cover your operating costs and the costs of your website reduces the burden on your commercial operations. Therefore the donations are not intended exclusively for charitable purposes.

Conclusion

Based on the facts, we conclude that you are not operated exclusively for charitable purposes and are not described in section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

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

Enclosure: Publication 892