



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201345031**
Release Date: 11/8/2013
Date: August 14, 2013

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

UIL: 501.03-00; 501.35-00

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.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

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

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

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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

Sincerely,

Kenneth Corbin
Director, Exempt Organizations

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: June 24, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Incorporation date
C = State of incorporation
D = President
F = Treasurer
G = Secretary
H = Director
J = Director
K = Foreign city
L = Foreign country
N = Date of automatic revocation
P = Postmark date of reinstatement
X = Foreign charitable organization

UIL:

501.03-00
501.35-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code ("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.) Have you failed to demonstrate that you meet the organizational test under section 501(c)(3)? Yes, for the reasons described below.
- 2.) Have you failed to demonstrate that you meet the operational test as you do not

Letter 4036(CG) (11-2011)
Catalog Number 47630W

operate exclusively for an exempt purpose under Section 501(c)(3) of the Code? Yes, for the reasons described below.

- 3.) Does your lack of control and discretion over the funds you send to X, preclude you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.

Facts

You were incorporated on date B in the State of C. On date N, you were automatically revoked due to your non-filing of an annual information return (e.g. Form 990 or Form 990-EZ) or notice (Form 990-N) for three consecutive years. You submitted Form 1023, Application for Recognition of exemption on date P, which was prior to the date you were notified about the revocation.

Your Articles show your purpose " ... is to totally support the charitable activities of X, which provides quality education to at-risk children and to impoverished adults in developing countries." X is a foreign charitable organization located in country L.

X achieves its mission through scholarships and the creation of learning centers. X also establishes health and environmental programs in impoverished areas of the world.

You are the sole fundraiser of charity funds to X. Currently, your only activity is fundraising for the benefit of X. According to your Form 1023 application, you accept donations that are earmarked for X only.

Your governing body consists of D (President), F (Treasurer), G (Secretary), H and J (directors). F is the mother of D and G. D is located in country L and is the President of X.

Your Bylaws indicate you have annual meetings. Your first meeting was in August of 2011, at which time you formally adopted the Bylaws. All voting was done via internet messages and no minutes were taken. During the determination process, you did not have any other Board meetings and could not provide additional Board meeting minutes. However, you note that proper minutes will be taken for all future board meetings.

Your Bylaws describe your Officer positions as follows:

President: The President (D) shall be the on-site chief operating officer in foreign city K, in the country L, and shall have the general powers and duties generally vested in the office of President of a voluntary non-profit organization. These include but are not limited to the day-to-day management of X's Learning Center in foreign city K;

recruitment, selection and supervision of all volunteers; budgeting and disbursement of funds for day-to-day operations; development, planning and execution all programs that fall within the purpose of organization. D will also serve as spokesman and chief fund raiser for organization. The President is a non-paid volunteer.

Treasurer: The Treasurer (F) shall not be on-site unless special trips to country L are justified and all travel-related expenses are paid from Treasurer's personal funds. Treasurer's functions include but are not limited to the management of incoming and outgoing U.S.A. funds; various administrative functions including accounting, tax reporting and coordination; maintain ongoing communications with President and volunteers as required. The Treasurer is a non-paid volunteer.

Secretary: The Secretary (G) is not required to be on-site in country L. The Secretary's function includes but is not limited to assisting the Treasurer in the execution of the Treasurer's function as required; serve as a non-paid consultant to the President in areas of fund raising and communications and to keep the organization's minutes. The Secretary is non-paid volunteer.

Although D lives in country L, D's family live and have owned a retail gift shop in state C for 20 years. In order to raise funds, the gift shop offers cold bottled water and % of proceeds go to X. The water is purchased with the family's personal funds. They have a sign that tells customers that the funds raised through the sale of bottled water goes to X. The gift shop also sells designer jewelry and donates to you a large percentage of each piece sold, which in turn goes directly to X.

D's family in state C has also contacted a local restaurant (which serves cuisine from country L) and they contribute \$ monthly to you, which in turn is sent to X. X has a website from their location in foreign city K and gift contributions flow through their e-commerce account, where deposits are made into your local bank account. D has access to the US bank account in country L. He withdraws funds as he deems necessary to pay the expenses of X. Future fundraising and fund distributions will be done in the same manner.

You have indicated that all transactions (gift donation transfers) are documented through electronic transfer of funds. Credit card and other funds received online through X's website are processed through the online payment service. The online payment services sends you monthly statements showing the amounts received. All donations go to a general operating fund for the sole use of X and are used to pay rent, utilities, buy school supplies, pay local staff (in country L), scholarships, and general operating expenses. Actual distribution of donations are made locally in country L by D. All withdrawals for X's operational expenses for their projects are made only by D. You indicated that the funds are transferred only after the governing body in the United States reviews the request for funds. You indicated that the governing body monitors

X's website on a daily basis and that the Treasurer monitors the online bank account daily. However, you have not demonstrated how the governing body exercises discretion and control over any funds that are funneled to X. There is no evidence of any procedures used to determine the validity of fund requests or monitoring of funding.

You provided past financial data and proposed budgets. All of the financial data shows your revenue coming from donations. Past expenditures are for rent, utilities, office expenses, salaries (for the staff of the Learning Center in country L), truck payments (for the vehicle in country L), the building of a recycling center (in country L) and other miscellaneous expenses related to the operations of X. The minimal expenses related to your operations were paid for by the personal funds of the Treasurer.

You indicated that all withdrawals (made in country L by D) are recorded and documented in foreign city K, by X's paid staff accountant. However, you have provided none of this documentation.

Other than D, members of the governing body have visited country L, but there is no evidence of any visits being made to L since you were incorporated.

Law

Section 501(c)(3) of the Internal Revenue Code recognizes organizations, which are organized and operated exclusively for religious, charitable, and educational purposes, as being exempt from federal income tax.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("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(b)(1)(i) of the Regulations state that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(ii) of the Regulations states that in meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations states that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Rev. Rul. 63-252, 1963-2 C.B. 101, states that contributions to certain domestic charitable organizations are deductible if it can be shown that the gift is, in fact, to or for the use of the domestic organization, and that the domestic organization is not serving as an agent for, or channel for, a foreign charitable organization. The ruling decided the question of whether the amounts paid to the domestic organization are deductible under section 170(a) of the Code, in the following instances:

(1) In pursuance of a plan to solicit funds in this country, a foreign organization caused a domestic organization to be formed. At the time of formation, it was proposed that the domestic organization would conduct a fund-raising campaign, pay the administrative expenses from the collected fund and remit any balance to the foreign organization.

(2) Certain persons in this country, desirous of furthering a foreign organization's work, formed a charitable organization within the United States. The charter of the domestic organization provides that it will receive contributions and send them, at convenient intervals, to the foreign organization.

(3) A foreign organization entered into an agreement with a domestic organization which provides that the domestic organization will conduct a fund-raising campaign on behalf of the foreign organization. The domestic organization has previously received a ruling that contributions to it are deductible under section 170 of the Code. In conducting the campaign, the domestic organization represents to prospective contributors that the raised funds will go to the foreign organization.

(4) A domestic organization conducts a variety of charitable activities in a foreign country. Where its purposes can be furthered by granting funds to charitable groups organized in the foreign country, the domestic organization makes such grants for purposes which it has reviewed and approved. The grants are paid from its general funds and although the organization solicits from the public, no special fund is raised by a solicitation on behalf of particular foreign organizations.

(5) A domestic organization, which does charitable work in a foreign country, formed a subsidiary in that country to facilitate its operations there. The foreign organization was formed for purposes of administrative convenience and the

domestic organization controls every facet of its operations. In the past the domestic organization solicited contributions for the specific purpose of carrying out its charitable activities in the foreign country and it will continue to do so in the future. However, following the formation of the foreign subsidiary, the domestic organization will transmit funds it receives for its foreign charitable activities directly to that organization.

The revenue ruling states that it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such cases, the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient. Accordingly, the Service holds that contributions to the domestic organizations described in the first and second examples set forth above are not deductible. Similarly, those contributions to the domestic organization described in the third example which are given for the specific purpose of being turned over to the foreign organization are held to be nondeductible.

Rev. Rul. 66-79, 1966-1 C.B. 48, amplifies Rev. Rul. 63-252 to provide that contributions to a domestic charity that are solicited for a specific project of a foreign charitable organization are deductible under section 170 of the Code if the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. This conclusion is reached because the contributions received by the domestic charity are regarded as for the use of the domestic organization and not the foreign organization receiving the grant from the domestic organization.

Rev. Rul. 68-489 1968-2 C.B. 210 held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its grants were made in furtherance of a charitable purpose: to assist the poor. The organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979) aff'd 631 F. 2d 736 (7th Cir 1980) cert. den. 450 U.S. 981 (1981), the Tax Court held that although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially. The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court held that petitioner had not shown it was operated exclusively for exempt purposes or the no part of its earnings inured to the benefit of its officer.

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that an organization failed to establish exemption when the organization failed to provide requested information. The court stated "[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities Such generalizations do not satisfy us that [applicant] qualifies for the exemption."

Application of Law

Your certificate of formation and the amendments to it do not specifically limit your purposes to those exempt under section 501(c)(3) of the Code. For this reason, as noted in Income Tax Regulation sections 1.501(c)(3)-1(b)(1)(i), 1.501(c)(3)-1(b)(1)(ii), 1.501(c)(3)-1(b)(1)(iv), you do not meet the organizational test.

We cannot determine and you are unable to substantiate that your fund distribution program is furthering exclusively 501(c)(3) purposes. Therefore, you do not meet the operational test.

As noted in Income Tax Regulation section 1.501(c)(3)-1(a)(1), failure to meet the organizational or operational test precludes exemption under section 501(c)(3) of the Code. You do not meet either the organizational or operational tests.

You indicate that the only activity you partake in is fundraising for X. However, you have not demonstrated any discretion and control over the funds that you send to X. As described in Rev. Rul. 63-252, you act as a channel for a foreign organization. You are only nominally the donee; the real donee is the ultimate foreign recipient. Therefore, contributions to you would not be deductible.

Unlike the organization described in Rev. Rul. 66-79, the contributions you receive are not for your use; rather, they are for the use of X. You were formed specifically to raise funds in the United States and send them to X.

The funds you raise are used exclusively by D for X to use as he sees fit. Although he is a member of your governing body, the rest of the governing body has no input or control over how the funds are spent. As noted in Rev. Rul. 68-489, the lack of control and discretion preclude exemption when there is no evidence that the funds are spent exclusively for exempt purposes.

Like Church in Boston, *supra*, your method of distributing grants shows no manner of objective selection. You provided no criterion for why grants were awarded and no reasoning behind the amounts given. The grants were never discussed openly with the governing body. You demonstrated no formal process that took place prior to the distribution of funds. Instead, the distributions relied solely on D's opinion. Since he is the only governing body member on the site of X, you have not sufficiently monitored the funds or how they were spent. For this reason, we cannot determine that the funds were used exclusively for exempt purposes.

As seen in Western Catholic Church, *supra*, a lack of sufficient records made it impossible to trace the entity's use money completed and the that organization was denied exemption. Similarly, you allowed D to make all funding decisions and provided no evidence of any follow up activity to ensure that the funds were awarded exclusively for exempt purposes. Since you sole activity is the distribution of funds to X, and those funds cannot be confirmed as being used for charitable purposes, you are not operated exclusively for exempt purposes under section 501(c)(3) of the Code.

As noted in Peoples Prize, *supra*, generalizations that X is operated exclusively for exempt purposes and your assurance that D is acting charitably are not sufficient evidence of to support your contention of exemption under section 501(c)(3) of the Code. Your indication of moderating X's website and monitoring the online bank account do not demonstrate control over the funds or their use. Since you cannot provide evidence of any control over the funds and cannot substantiate that they are used for exclusively exempt purposes, we cannot find you to be exempt under section 501(c)(3) of the Code.

Applicant's Position

You have provided no rebuttal to our assertion that you are not exempt under section 501(c)(3) of the Code.

Conclusion

Based on the facts, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code as you are not operated exclusively for 501(c)(3) purposes. Your organizational document does not limit your purpose to those that qualify exclusively as exempt purposes under section 501(c)(3) of the Code. Thus, you fail the organizational

test. You also fail the operational test. You lack documentation, records and evidence that distributions were made and used exclusively for 501(c)(3) purposes. You have not held any meetings resulting in no recordation. One person has complete control over all funds and has not consulted the governing body in any manner on how to spend the funds. Thus, you do not exercise adequate discretion and control over funds you have distributed and therefore, you do not qualify for exemption under 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*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

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

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

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 and Agreements

Enclosure: Publication 892