



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201345032**
Release Date: 11/8/2013
Date: August 16, 2013
UIL Code: 501.03-08
501.30-02
501.33-00
501.35-00

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

Dear

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

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

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

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 26, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
C = State
D = For-Profit Accounting Firm

E = Individual
F = Individual
G = Company
H = Individual
J = Individual
K = Individual
L = Organization
M = Company
N = Company
O = Individual
P = Individual
R = Individual

UIL:

501.03-14
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501.35-00

Dear _____

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

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

Issues

1. Have you failed to establish that your activities are exclusively educational or charitable as defined in section 501(c)(3) of the Code? Yes, for the reasons described below.
2. Do your activities provide more than insubstantial private benefit to related for-profit entities? Yes, for the reasons described below.
3. Do your activities inure to the benefit of E, an insider to you? Yes, for the reasons described below.

Facts

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation ("Articles") state:

"This organization is organized exclusively for charitable, educational, and community outreach purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended, including for such purposes, the making of distributions to organizations that also qualify as section 501(c)(3) exempt organizations. "

Your bylaws state that your specific purposes include "educating families to become economically self-sufficient through offering education and coaching on developing savings account, tax information, how to maximize tax benefits, financial literacy in particular the importance and how to main good credit, training on money management and budgeting."

Your initial application showed your governing body consisted of E and F. E is F's mother and both were compensated. During the processing of your application, you modified your governing body twice; first to include E, H, J and K, with the final list showing a five member governing body consisting of H, J, O, P and R. These new members were added in response to our inquiries concerning your application and related parties. Even though you claim E and F have been removed from the governing body, the last correspondence we received was signed by E as "Executive Director/Owner."

The original activity description submitted with your Form 1023 differs substantially from the revised activity descriptions in response to our numerous inquiries. Throughout the processing of your application you continuously made changes to your name, governing

body, affiliations with related entities, and your proposed activities. For example, Form 1023 indicated that your alternate name is D. You submitted a copy of D's website page detailing the services provided by D including debt management, debt negotiation, debt settlement, free seminars and classes, credit enhancement, tax relief help and financial literacy as well as various accounting and small business services. You also submitted a brochure detailing the services that you provide. The brochure indicates that you provide specialized accounting services for not-for-profit organizations including computerized accounting, on site management services as well as management reports. Additional services include payroll and taxes. Finally, the brochure includes the following statement: "[You are] dedicated and committed to providing churches and church-based organizations, non-for-profit, and small to mid-size businesses the highest quality of accounting, tax preparation and financial management consulting services and provides excellent client services."

Then, in response to our correspondence, you submitted additional information regarding your operations resulting in substantial changes to your method of operation and activities. You stated that you will now just contract various services from D, although previously you stated that D is your alternate name. D is actually a separate legal entity providing accounting, tax preparation and financial management consulting services to individuals, for-profit and non-profit businesses and organizations.

At one point you stated that your main focus is to locate funding for services to assist low to moderate income families by matching funds for first time homebuyers, obtaining higher education and becoming entrepreneurs. Later you stated that you will not provide matching funds or down payment assistance. In addition, you revised your statement that you planned to just utilize the services of D by stating that you are no longer planning to do so. You will now provide the credit counseling and other financial services from within, although some services may be conducted by outside sources that are yet to be determined. The service that D was going to provide was credit counseling. You stated approximately % of your business clients will be other section 501(c)(3) organizations. Later, you subsequently clarified that % of the individuals that you service come through seminars held at churches and other non-profits and the clients are not themselves section 501(c)(3) organizations. Two of your employees are also currently employed by D.

You submitted a copy of your lease agreement, which you have assumed from D. You do not share the facility with D, as they have moved to a new location.

Your final activity description included the following:

- Financial Education Services – %
- Housing – %

- Personal Betterment – %.

Your financial education services include debt management, credit counseling, housing counseling, budgeting, banking, income tax preparation and small/business capital. Credit counseling services are provided in a group setting and consist of your power point presentation. G's curriculum is used for the presentation. G is a for-profit entity credit repair company that provides a variety of financial services. Clients come in and bring their credit report. You review their credit report with them and teach them how to read the report as well as discuss each item with them. You prepare a budget and advise your clients to contact their creditors to make arrangements to clear up any balances. When performing debt management services you complete an application and forward it to G. E is a certified debt consultant through G. Once you submit the application to G you are no longer involved in the process. You have a contract with G to send them clients. Your debt management program consists solely of making referrals to G. E is listed on G's brochure as a contact person for G's services. If a referred client utilizes G's services, E receives a commission check from G.

You made a presentation on debt management during a community event and conducted a seminar at a church with 21 people in attendance. You received a monetary "donation" from the church as a result of the seminar. The FDIC Money Smart program is used to teach some of these financial education sessions.

You may refer participants in your programs to other community organizations for services including local non-profits and governmental agencies. You are a member of an alliance group, L, which includes banks and credit unions to whom you will make referrals. L is the FDIC's national initiative to establish broad-based coalitions of financial institutions, community based organizations and other partners across the country to bring all unbanked and underserved populations into the financial mainstream. Over 25 financial institutions are represented and each client can choose which financial institution they like for services.

Your income tax preparation services consist of partnering with a local VITA organization to assist individuals with preparation of tax forms and conducting tax preparation days at local churches. No fees are charged to the individuals for these services, but you will charge each church \$ to provide the tax preparation service for their members.

Your housing program includes your placement of ex-offenders re-entering society into transitional housing. Your housing coordinator will meet with the individual, conduct a needs assessment and develop a goal plan. After enrollment the individual is assigned to a particular home by the coordinator, F. A strength-based case management program will provide case management to individuals living in group homes. Assistance

will be provided to identify and achieve goals as well as access the services needed to make a successful re-entry into society. Other services will be offered to ex-offenders including cognitive skills training and restorative justice education, along with literacy and GED services. You submitted copies of the educational materials used in the listed programs. Your housing occupants will pay a total of \$ a month in program fees. Local charitable organizations may pay some of the fees on behalf of clients. You do not own the housing facilities, but you sign a contract with the owners to place your clients in the homes. You are given a discounted rate by the owners.

Your personal betterment program includes anger management and conflict resolution education. Also, offered are literacy and GED services. Many of the programs are provided to individuals involved in the transitional housing program for ex-offenders.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit 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." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Rev. Rul. 67-5, 1967-1 C.B. 123, holds that a foundation controlled by the creator's family was operated to enable the creator and his family to engage in financial activities that were beneficial to them, but detrimental to the foundation. This resulted in the foundation's ownership of common stock that paid no dividends of a corporation controlled by the foundation's creator and his family, which prevented it from carrying on a charitable program commensurate in scope with its financial resources. This ruling concluded that the foundation was operated for a substantial non-exempt purpose and served the private interest of the creator and therefore, was not entitled to exemption under section 501(c)(3) of the Code.

Rev. Rul. 70-186, 1970-1 C.B. 128, in which it was found that it would be impossible to accomplish the organization's charitable purposes of cleaning and maintaining a lake without providing benefits to certain private property owners. In the quantitative sense, to be incidental, the benefit to private interest must not be substantial in the context of the overall public benefit conferred by the activity.

Rev. Rul. 80-287, 1980-2 C.B. 185, involves a non-profit lawyer referral service that arranges, at the request of any member of the public, an initial half-hour appointment for a nominal charge with a lawyer whose name is on an approved list maintained by the organization. Any further contact between the lawyer and the client is arranged without the involvement of the organization. It is a clearly established principle of the law of charity that a purpose is not charitable unless it is directed to the public benefit. Not every purpose which is beneficial to the community, however, is deemed charitable. As a general rule, providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a nonprofit basis, is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes. In this case, the lawyer referral service does not directly accomplish any of the established categories of charitable purposes. The program is open to all members of the community and, thus, is not operated exclusively for the relief of the poor, distressed, or under-privileged. The organization's activities are directed toward assisting individuals in obtaining preventive or remedial legal services covering the gamut of everyday legal problems and, as such, are not specifically designed to eliminate prejudice or discrimination or to defend human and civil rights secured by law. Therefore, the lawyer referral service does not confer a charitable benefit on the community. Although the lawyer referral service provides some public benefit, a substantial purpose of the program is promotion of the legal profession. This is a non-charitable purpose, and, in accordance with section 1.501 (c) (3)-1 (a) of the regulations and the *Better Business Bureau* case, it precluded exemption under section 501 (c) (3) of the Code

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In P.P.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar accountant, also the director of the bar, as well as two players. The board was self-perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners

In Leon A Beeghly v. Commissioner, 35 T.C. 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

Application of Law

The information you have provided is insufficient for us to conclude that you are operated exclusively for charitable and educational purposes as specified in section 501(c)(3) of the Code and required in section 1.501(c)(3)-1(c)(1) of the regulations. Due to the continuous changes and discrepancies throughout the processing of your application, you have failed to establish that you are conducting your activities in an exclusively exempt manner. The information you have provided contains discrepancies and changes in your name, address, board members, activities, associations with related entities, etc. Without having specific details regarding your operations, we are unable to determine that you meet the requirements for exemption under section 501(c)(3) of the Code.

The activities you were able to adequately describe show that you provide more than insubstantial private benefit to G. This is evidenced by the fact that you contract with G to provide it with referrals of clients who are likely to participate in G's debt management program. Because of these referrals, G receives increased revenue in the form of new clients. This is in direct contradiction to section 1.501(c)(3)-1(c)(2) of the regulations, which states an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

You do not meet the requirements of section 1.501(c)(3)-(d)(1)(ii) of the regulations because your activities inure to the benefit of E, an insider. As a result of referrals to G,

E receives commission fees. These fees represent more than an insubstantial benefit to E. Because E is an insider, this constitutes inurement.

Similar to the referral service in Rev. Rul. 80-287 while you are providing some public benefit by educating clients regarding their credit report, more than an insubstantial benefit is received by G and E as a result of this activity. The presence of a single nonexempt purpose that is substantial in nature will destroy the exemption regardless of the number or importance of exempt purpose. See Better Business Bureau of Washington, D.C. v. U.S.

You are similar to the organizations in P.P.L. Scholarship v. Commissioner and Leon A Beeghly v. Commissioner, in that related for-profit entities benefit from your activities. E is employed by G and you refer clients to G. Although it is unclear what position E currently holds with you because of the discrepancies, it is clear she was the driving force behind forming you and is still actively involved in the decision making for you. Therefore, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii).

You are also similar to the organization in Revenue Ruling 67-5, in that your activities benefit your creator. Like the organization in this ruling, you are operated for a substantial non-exempt purpose and serve the private interests of your creator.

In Rev. Rul. 70-186 it was found that it would be impossible to accomplish the organization's charitable purposes of cleaning and maintaining a lake without providing benefit to certain private property owners. You differ substantially from this ruling because the private benefit to G and E is not necessary to accomplish your charitable purpose, and therefore, cannot be incidental. Also, due to the changes and discrepancies, your relationship with D is unclear and may also provide more than insubstantial private benefit..

Conclusion

Due to the constantly changing facts and contradictions throughout the processing of your application, you have failed to establish that your activities further an exclusively charitable or educational purpose. Furthermore, the activities that you were able to describe make it clear that you provide more than insubstantial private benefit to G and inurement to E. Therefore, you are not operated exclusively for purposes described in section 501(c)(3).

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

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, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Types of information that should be included in your protest can be found on page 1 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to protest the determination;
3. A copy of the 30-day letter showing the findings that you disagree with (or the date and IRS symbols from the letter);
4. An explanation of your reasons for disagreeing, including any supporting documents; and
5. The law or other authority, if any, on which you are relying

Include the following declaration with your protest statement:

"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 relevant facts, and such facts are true, correct, and complete."

Your protest 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,

Kenneth Corbin
Acting Director, Exempt Organizations

Enclosure, Publication 892