



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201404012**
Release Date: 1/24/2014

Date: October 25, 2013

UIL Code: 501.31-01

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.

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,

Karen Schiller
Acting 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: September 10, 2013

UIL Code: 501.31-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

Applicant =

Business =

Date =

Founder =

State =

Dear :

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

Facts

You were formed as a not-for-profit corporation under state law in 2009. You amended and restated your Articles of Incorporation in 2012 to include the following purpose clause:

[Applicant] is formed exclusively for educational and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Your amended and restated articles do not include any other language relating to § 501(c)(3). Although you included a clause directing assets to a § 501(c)(3) organization in the event of a dissolution in your original articles, your amended and restated articles superseded the original articles. The amended articles thus do not include a dissolution clause.

Your bylaws and your Form 1023 narrative description of activities state that you are a:

...non-profit, non-partisan alliance of community leaders, organizations, community activists, families and individuals that serves as a national institutional catalyst for positive social change and political advancement in

healthcare and educational issues and concerns. [Your] primary purpose is to analyze healthcare and education issues of common concern to consumer communities, especially the family network, and develop strategies for espousing and advocating an informed perspective before the various levels of government, the private sector and other relevant healthcare and educational institutions.

Your initial information submission describes two primary types of activities. The first involves conducting surveys of local health plans, medical groups, and educational organizations. Information from the surveys will be used to assist such organizations in “advancing the practice of patient- and family-centered care,” and “advancing the practice of research-based, best practices in instituting quality education at the elementary and secondary levels.” You state that based on the survey findings, you will be able to offer a variety of assistance including:

- Consulting
- Webinars and networking opportunities
- Securing organizations’ participation at national seminars with patient/family leaders
- Providing start-up funds for special projects
- Advancing the practice of research-based, best practices in instituting quality education at the elementary and secondary levels

You describe the second primary activity as focusing on: 1) Establishing Partnerships with Healthcare Organizations and Educational Organizations, and 2) Disparities in Health and Education—Similarities in Quality Needs.” In this effort, you describe your role as hosting patient self-management sessions, distributing consumer/family-centered materials, convening workshops and seminars, recruiting and training “Fellows” who will function as advisors to healthcare and educational organizations and serve as a stream for your potential board members, developing a healthy eating program for schools, and developing a quality-healthcare related program.

Your initial application stated that your goals are to:

- Establish a one-day conference of workshops and seminars designed to promote a national agenda on healthcare and education
- Establish a web-based FAQ to give consumers the ability to develop specific questions targeting health and education concerns
- Develop, coordinate and convene workshops and trainings to consumer communities about varied healthcare and educational issues and concerns
- Function as a center-based program for consumers to preventative information about healthcare and education needs
- Employ and/or train healthcare and education staff and volunteers

In 2012, you provided additional information about your actual past and present activities, which include:

- Providing brochures about "health literacy" to participants at a conference on infant mental health
- Providing financial sponsorship for a week-long "Health, Wealth and Wellness Week," where Founder also conducted two presentations
- Providing financial support for "healthy refreshments" to participants in a weekly meeting to promote healthy lifestyles of African American women between the ages of 40-75
- Providing financial and script support for a documentary run by another organization in State
- Corresponding with another organization about its work improving education overseas

You also provided updated information about your planned activities, including:

- Speaking about childhood obesity at an annual public health conference
- Acting as support group coordinator for biweekly meetings for young offenders
- Serving as project coordinator for a high school essay contest about childhood obesity
- Serving as project coordinator for a film documentary about childhood obesity

Your bylaws state that you are governed by a board of directors of at least three, but no more than six. Vacancies are filled by the board, with the recommendation of the Executive Director. Your bylaws include additional conflict of interest provisions:

Any member of the board of [Applicant] who has a financial, personal, or official interest in, or conflict (or appearance of a conflict) with any matter pending before the Board, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner, will offer to the Board to voluntarily excuse him/herself and will vacate his seat and refrain from discussion and voting on said item.

You acknowledge that you share an office address, telephone, fax, and email address with Business, a taxable entity. You also submitted a letter on Date using Business's letterhead. However, you represented that none of your officers, directors, or employees has a business or other connection to Business, and that you do not receive funding or other sources of support from Business.

You state you intend to receive your funding primarily through gifts, grants, and contributions from the general public. Your application anticipated revenue from contracts and fees for services. At the time of your application, you did not have any "official plan" of targeted grant organizations, but you state in later correspondence that you intend to target potential local grantors that "have a common focus on health and education policy, advocacy and literacy." Your most recent financial information does not mention contracts or fees for service, but does include receipts from membership fees. Later correspondence states that you are not pursuing adding members at this time. Your organizing documents do not mention any classes of members or membership.

Law

Section 501(c)(3) of the Code provides an exemption for corporations organized and operated exclusively for religious, charitable, scientific literacy, or educational purposes, no part of the net earnings of which inures to the benefit of any shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

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

Section 1.501(c)(3)-1(b)(1)(i) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iii) states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) 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 § 501(c)(3). An organization will not be regarded as exempt if more than an insubstantial part of its activities further a non-exempt purpose.

Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1) provides that an organization may be recognized as exempt under § 501(c)(3) if it is operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this subsection, an organization must 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)(3)(i) includes in the definition of educational activities the instruction or training of the individual for the purpose of improving or developing his capabilities and the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 56-304, 1956-2 C.B. 306, states that a § 501(c)(3) organization can make a distribution to an individual, provided such distribution is made on a true charitable basis in furtherance of the organization's charitable purposes. However, such organizations should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Section 4.03 of Rev. Proc. 2010-9, 2010-2 I.R.B. 258, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, the Service will generally issue a proposed adverse determination letter or ruling.

"Tax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973) (citing Dickinson v. United States, 346 U.S. 389, 74 S. Ct. 152, 98 L. Ed. 132 (1953)). The Tax Court has stated that an application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3)." Bubbling Well Church of Universal Love, Inc. v. Comm'r, 74 T.C. 531 (1980). See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970). Furthermore, the courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption where the organization fails to provide requested information. "[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." Peoples Prize v. Comm'r, T.C. Memo 2004-12 (2004).

In The Church in Boston v. Commissioner, 71 T.C. 102 (1978), the Tax Court determined that an organization did not provide sufficient information for the IRS to determine whether grants to individuals were made in an objective and nondiscriminatory manner and whether the

distribution of such grants was made in furtherance of an exempt purpose. The petitioner organization was unable to furnish any documented criteria that would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant.

In Share Network Foundation v. Commissioner, T.C. Memo 1999-216 (1999) the Court provided that an organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax exempt status.

In Solution Plus, Inc. v. Commissioner, 95 T.C.M. (CCH) 1097 (2008), the Tax Court provided that a charitable organization's programs must benefit the members of a recognized charitable class in a "nonselect manner."

In Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009), the Tax Court held that the taxpayer's responses to Service requests for additional information failed to clarify its purposes and activities and the generalizations did not provide sufficient detail to determine that it would be operated exclusively for exempt purposes. Therefore, the Service was justified in denying exempt status.

Analysis

You have asked us to recognize you as an organization described in § 501(c)(3). But before we can conclude that you are organized and operated exclusively for one or more exempt purposes described in § 501(c)(3), we must have a clear and unambiguous understanding of your activities. Under the standard described in § 4.03 of Rev. Proc. 2010-9, we will recognize your exempt status only if your operations are described in sufficient detail to permit a conclusion that you will meet the requirements of § 501(c)(3). See also, Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009). You have not described your activities clearly or unambiguously and, consequently, we are unable to conclude that you meet the requirements of § 501(c)(3). Furthermore, your actual activities diverge from your stated purposes, and neither establishes that you are operated for exclusively exempt purposes.

The activities described in your initial 1023 submission vary greatly from your actual activities described in subsequent correspondence. Rather than focusing on health-related educational activities, your primary activities are focused on grantmaking to other organizations. Although grantmaking is permitted by § 501(c)(3) organizations, it must be done in accordance with established precedent. See The Church in Boston, supra and Solution Plus, Inc., supra. You have not provided any evidence of whether your grants were made to exempt organizations, whether the decisions were made in an objective and nondiscriminatory manner, whether such grants furthered an exempt purpose, whether they benefited your officers and directors, or whether you have kept adequate records.

Although you did provide some general information about your potential sources of grant income, your financial information does not meet the specificity required by Rev. Proc. 2010-9. For example, you state you do not have any members, but list membership fees as actual

revenues received in your most recent financial information. The more recent information contains different categories of revenue and expenses, and neither appears to correspond with your activities.

Most importantly, you have not established that you will operate exclusively for exempt purposes. Treas. Reg. § 1.501(c)(3)-1(a)(1). While analyzing healthcare and education issues, as you said you planned to do in your application, could be an exempt purpose, you do not appear to have conducted any analysis. An exempt organization is permitted to conduct some lobbying and grassroots lobbying, as you aspired to do in advocating an informed perspective before various levels of government. But you have not conducted such lobbying.

You also listed many activities that are not exclusively exempt such as conducting surveys of health plans and medical groups, using the results to assist those organizations by consulting, presenting networking opportunities, and providing start-up funds for special projects. All of these are commercial activities regularly engaged in by for-profit entities.

Your actual activities have been different from those you described in your application, and do not necessarily promote exempt purposes. The conferences and meetings to which you gave financial support were not clearly educational or charitable. The information you provided consisted of generalizations that did not enhance our understanding of your activities, and were not sufficient to determine that you are operated exclusively for exempt purposes. See Rev. Proc. 2010-9, supra, and Ohio Disability, supra.

Conclusion

Based on the above, we have concluded that you have not shown that you are operated exclusively for charitable purposes under § 501(c)(3). Therefore, we cannot recognize you as an exempt organization under § 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

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

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS*

and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224-0002

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Karen Schiller
Acting Director, Rulings and Agreements