



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201407014**
Release Date: 2/14/2014
Date: November 20, 2013

UIL:
501.00-00

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

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. We also called you and left a message. We did not receive a protest within the requisite 30 days, so 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: August 30, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.03-00

Legend:

Company =

Dear :

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

Facts

You are organized as a nonprofit corporation for public and charitable purposes under your state law. Your articles of incorporation state that:

The specific purpose of this corporation is to solicit donations from large corporate givers and distribute funds to local schools (verified 501c3 status) as designated by the user base of a mobile application.

In the narrative part of your Form 1023, you state that you were established to support other organizations conducting charitable activities and to advance education by helping transfer funds from corporate givers to schools and other charities through use of a software application. In descriptive material you explain that you will "align businesses' marketing goals with schools' fundraising needs."

Individual participants in your fundraising program download a free software application (application) to their cellular telephones. Each participant designates and registers his or her favorite school and uses the application to learn about nearby merchant and internet partners. Each school must provide you with its employee identification number and a designated contact person in order to receive funding. Once it is downloaded, consumers can use the application to make purchases from participating retailers as well as "check-in" at locations throughout their communities.

Participants may also contact merchants through your website. When a participant clicks on a listing in your directory to confirm a "visit" to a sponsored location, the sponsor displays a message on the participant's phone. Your application also allows the user to interact with the sponsored location in other ways: adding photos, comments, reviews, viewing maps, sharing with friends via social media. Every purchase or check-in results in funds being credited to the school chosen by the participant.

You solicit lump-sum payments from retail merchants and other local and national businesses that you aggregate into a "pool." At the end of each month you compute the number of visits to each merchant multiplied by the amount each merchant pledges, typically 5 to 10 cents for each check-in, or the percentages of each purchase, to determine the amount "earned" by each school. Within 45 days of a calculation that an exempt entity has accumulated at least \$25 of credits, you will distribute the funds to it. You have described this as giving parents, students, and other concerned citizens the "ability to earn funds" from donors and "direct the allocation and distribution of these donated funds" to the school or other educational charity of their choice.

You encourage businesses to support your program. In an article dated October 5, 2010, you state that you provide "a creative and cost-efficient way for businesses to attract and create loyal customers while doing good" in their local communities. You also customize brand messages and badges that can be earned and shared by users of the applications.

The charitable pledge and contribution agreement that you use with sponsors states that you will provide to the donors written reports indicating the number of visits made by users of your software application, which schools or other charities will receive donations, and the calculation of the amount of such donation. For early sponsors you contemplated offering incentives such as appearances, videos of their locations, inclusion on materials circulated to schools, and interviews with their executives. In information that you submitted, you also state that a business that participates in your program may receive "aggregated demographic data about its consumers; push promotions or coupons to consumers when they're in the area; access consumer feedback; promote a new product launch or call to action; direct consumers to their own app or website; share a video; launch a click to call program; gain twitter followers or Facebook fans."

In a presentation for businesses that you provided to us, you explain the multiple benefits to a business:

- A turnkey, hyper-local, mobile and social marketing program, delivering powerful, frequent incentives for families to visit and spend at your locations
- PR and promotional consideration
- Increased brand recognition at thousands of local schools across the US
- Monthly reporting to account for funds

You offer additional promotional opportunities to businesses that make larger donations: text, graphic, and video ads, and offer to customize sponsorship of non-commercial locations to "create a branded sponsorship perfect for your business!"

You represent that your fundraising model supports educational needs, and that it has been applauded as an innovative way to fund quality education at local schools. You state that for-profit businesses are interested in signing as merchant partners, but only if you are recognized as tax-exempt. Your primary source of revenue will be the payments made by merchants as a result of shopping done by users of your cellular telephone application. You project yearly revenues of \$1 million after three full years of operation.

You will forward about 80 percent of the revenue generated from corporate sponsors to eligible schools and other charities. You will use 20 percent of the funding to pay operating and administrative expenses as determined by your board of directors.

Your Board of Directors is comprised of five persons. Your founder and her husband serve as your president and vice president, respectively. Your founder and her husband receive compensation, but you also have three outside directors who are not compensated at this time.

Your founder and president is also founder and president of Company, a for-profit media business that provides consulting, product development and marketing services. Company owns the license to the software and hosts the web services for your software application. Company has the right to adapt and license this software to other companies, for-profit and non-profit, for additional uses. For a time, Company leased the applications software and related services to you under a written agreement. Your outside directors have since voted to terminate the lease. You state that Company will waive payment of the lease obligations that you owe and contribute 50 percent from each software marketing campaign to you under a standard donor agreement.

LAW

I.R.C. § 501(c)(3) describes organizations organized and operated exclusively for charitable, scientific, or educational purposes.

Treas. Reg. § 1.501(c)(3)-1(a) states that in order to be described in I.R.C. § 501(c)(3), an organization must be both organized and operated for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operation test, it is not described in I.R.C. § 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(b) describes the organizational requirements for an exempt entity, including the required provisions for its articles of incorporation.

Treas. Reg. § 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in I.R.C. § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 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 requirement of this subsection, the burden of proof is on the organization to show 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.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) provides that the term educational relates to: (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

I.R.C. § 513(a) defines the term "unrelated trade or business" to include any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable purpose or function constituting the basis for its exemption under I.R.C. § 501. The term "trade or business" as used in I.R.C. § 512 and I.R.C. § 513 has the same meaning given the term in other sections of the Internal Revenue Code.

I.R.C. § 502(a) provides the general rule that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under I.R.C. § 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under I.R.C. § 501.

Rev. Rul. 64-182, 1964-1 C.B. 186, involved an organization whose charitable purpose was carried out by aiding other charitable organizations through contributions and grants to such organizations for charitable purposes. The Service held that the organization was deemed to be operated exclusively for one or more exempt purposes, and not as an unrelated trade or business under Treas. Reg. § 1.501(c)(3)-1(e)(1), because it was carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources.

Rev. Rul. 67-149, 1967-1 C.B. 133, held that an organization formed for the purpose of providing financial assistance to several different types of tax-exempt organizations was itself exempt from tax under § 501 (c)(3). The organization carried on no other operations than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals.

In Rev. Rul. 76-442, 1976-2 C.B. 148, an organization provides free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity. The revenue ruling states that aiding individuals in their tax and estate planning is not a charitable activity in the generally accepted legal sense. The organization is providing commercially available services to individuals who can afford them. The revenue ruling concludes that although funds may ultimately be made available to charity as a result of the organization's planning assistance to individuals, the benefits to the public are tenuous in view of the predominantly private purpose served by arranging individuals' tax and estate plans. The fact that gifts to charity are contemplated in the plans do not convert the organization's assistance into a charitable activity or one that promotes social welfare within the meaning of the regulations.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

Lorain Avenue Clinic v. Commissioner, 31 T.C. 141 (1958) provides that in order to qualify for exemption from tax, an organization has the burden of providing that it is both organized and

operated exclusively for charitable purposes and that no part of its net earnings inures to the benefit of any private individual. Further, a ratio of income based compensation agreement that is tantamount to a joint venture between the organization and persons in control of the organization will disqualify such an organization from qualifying for tax-exempt status as an organization described under I.R.C. § 501(c)(3)

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court considered the charitable purpose of an organization founded by owners of property bordering a dredged area of Long Island Sound, supported by fees assessed in proportion to the amount of land and extent of waterfront owned by each member. It held that any public benefit was secondary to the private benefit to the members.

In Easter House v. U.S. 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F. 2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiff's competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under I.R. C. § 501(c)(3).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under I.R.C. § 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. In addition, the court found that the organization 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."

In Church by Mail, Inc. v. Commissioner, TC Memo. 1984-349 (1984), aff'd 765 F. 2d 1387 (9th Cir. 1985), the tax court found that the church in this case was operated with a substantial purpose of providing a market for an advertising and mailing Company owned by the same people who control the church. The church argued that the contracts between the two were reasonable, but the Court of Appeals pointed out that the "critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), an applicant's regularly scheduled bingo games were held on the premises of a for-profit business which sold food and beverages. The applicant did not make any cash payments for rent or wages to the for-profit lounge. However, the court held that the games, conducted by the for-profit's owners who also controlled applicant's governing board, more than incidentally benefited the for-profit business by attracting additional customers.

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36 (1989), a nonprofit organization that conducted continuing medical education tours abroad had been formed and was controlled by owner of the for-profit travel agency that the nonprofit used

exclusively under a contract not subject to competitive bid and to which the nonprofit paid 90% of its revenue. The Court found that the educational tour organization had been formed to provide private benefit to the for-profit travel agency.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991) aff'g 70 T.C. 352 (1978), the court determined that a nonprofit organization established by the Seventh Day Adventist Church to operate restaurants and health food stores to carry out its "health ministry" was not exempt under section 501(c)(3) as a religious organization. The court of appeals affirmed the tax court's finding that "Living Faith's religious purposes, although sincere, did not sufficiently mitigate the 'clear commercial purpose' of its operations." The court noted that the organization was in competition with other restaurants, advertised, charged market rates and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 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 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 activity of operating a for-profit conference center. The court stated, "While plaintiff's organizational purpose is exempt and the foundation operates, in important respects, in an exempt fashion, there is a distinctive 'commercial hue' to the way Airlie carries out its business." Id. at 65.

In Zagfly, Inc. v. Commissioner, T.C. Memo 2013-29, an applicant proposed to sell flowers over the internet, allowing purchasers to direct a portion of their payment to recognized exempt organizations and to the applicant for its operating costs. The applicant argued that it was not a business as it planned to direct the profit to contributions and that giving the opportunity to contribute to its customers was a charitable purpose. The court held that selling flowers at market prices over the internet was a business, and not substantially related to an exempt activity.

ANALYSIS

An entity seeking tax-exempt status under I.R.C. §501(c)(3) must be both organized and operated exclusively for exempt purposes with no part of its net earnings inuring to the benefit of any private shareholder or individual. An organization is "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such purposes specified in I.R.C § 501(c)(3). Based on the information provided, we conclude that you are not an exempt organization described in I.R.C. § 501(c)(3).

The requirements of the organizational test are set out in Treas. Reg. § 1.501(c)(3)-1(b). Under this test, your articles of incorporation must limit your purposes to one or more exempt purposes specified in I.R.C. § 501(c)(3). In addition, your articles may not authorize you to engage in substantial activities that are not in furtherance of an exempt purpose. Your articles of incorporation state that you are organized to "solicit donations from large corporate givers and distribute funds to local schools (verified 501c3 status) as designated by the user base of a

mobile application.” This specific purpose is broader than the purposes specified in the Code, and empowers you to engage in activities which are not in furtherance of one or more exempt purposes.). Accordingly, you do not meet the organizational test described in Treas. Reg. § 1.501(c)(3)-1(b).

You also are not operated for exclusively exempt purposes. Your activities are not educational within the meaning of Treas. Reg. §1.501(c)(3)-1(d)(3) as you do not instruct or train individuals or the public. Instead of carrying on activities that promote education, you provide a software application that allows the users to designate the recipients of the funds from participating merchants that flow through you.

Nor are your activities charitable. You do not make grants and contributions from your own funds and based on your own criteria like the organizations recognized as exempt in Rev. Rul. 64-182, 1964-1 C.B.186, and Rev. Rul. 67-149, 1967-1 C.B. 133. Rather, like the internet florist organization in the recent decision of Zagfly, Inc. v. Commissioner, T.C. Memo 2013-29, and the tax and estate planning organization in Rev. Rul. 76-442, 1976-2 C.B. 148, you do not decide how much money to donate or which charities should receive it. You merely transfer what is “earned” by potential customers interacting with your merchant sponsors. Your activities are not themselves charitable, but constitute the provision of commercially available services.

Your primary purpose is commercial. It has long been settled that a single non-exempt purpose prevents recognition as exempt under I.R.C. § 501(c)(3). See Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945). Collecting funds from merchants and corporations in return for promoting their businesses on your mobile and web-based media and transferring such funds to schools based on the shopping habits and purchases of participants is a commercial business development service for the merchants and a commercial fundraising service for the schools. Like the organization in BSW Group, Inc. v. Commissioner, 70 T.C. 352 (1978), your activities constitute the conduct of a trade or business ordinarily carried on by for-profit commercial businesses. The exchange of goods and services is the essence of commercial activity.

In Airley Foundation v. Commissioner, 283 F.Supp. 2d 58 (D.D.C. 2003), the court discussed some business methods that indicate commercial operation. They include competition with commercial entities, extent of below cost services provided, reasonableness of financial reserves, promotional methods and extent of charitable donations. As discussed above, it appears that you compete with commercial enterprises using many ordinary business methods, particularly promotional methods. You state that you offer commercial entities attractive marketing opportunities to deliver text, graphic and video messages to people who show interest in their businesses, and web locations for actually purchasing goods and services from the commercial “sponsors.” You describe your activities in commercial marketing terminology stating that you offer a “social marketing program,” a “cost-efficient way for businesses to attract and create loyal customers,” and that you help “create a branded sponsorship.” Most of your revenue will be generated from your marketing activities, rather than from donations by individuals and foundations. By encouraging individual participants to shop at merchant partners by arranging for a small amount to be contributed to local schools, you are providing business development services for the merchants, which is an ordinary trade or business. Your activities increase the merchants’ customer traffic, enhance their profitability, and return valuable information about customers to the merchants while facilitating donation of corporate donations to local schools.

Unlike the organizations in Rev. Rul. 64-182, *supra*, and Rev. Rul. 67-149, *supra*, that did not conduct businesses as their main purpose and made direct contributions and grants of their funds to exempt organizations that they selected, your activities do not achieve an exempt purpose. See also I.R.C. § 502(a). In addition, you are similar to the non-qualifying organization in Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F. 2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), which was determined to be carrying on essentially commercial activities in competition with ordinary commercial enterprises, rather than activities that furthered a charitable purpose.

An organization's purpose, whether commercial or charitable, may be inferred from its activities and type of operations. Living Faith Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991) aff'g 70 T.C. 352 (1978), at 372. Certain operations are regarded as "presumptively commercial" such as selling drugs to the public or operating restaurants. Providing marketing and promotion through proprietary software is normally a commercial activity. One of the factors indicating commercial character is competition with for-profit entities that engage in the same activities. Living Faith, at 373. Not only do commercial entities sell marketing services similar to yours, your founder does so through the Company that she owns. Another characteristic of commercial character is promotional advertising. The materials that you submitted include different kinds of promotion to your target corporations, emphasizing the benefits they would accrue from participating.

Furthermore, you operate for the substantial non-exempt purpose of providing private benefit to businesses and individuals. An entity is not organized or operated exclusively for one or more tax-exempt purposes unless it serves a public rather than a private interest. To meet this requirement, 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. Section 1.501(c)(3) - 1(d)(1)(ii). You provide benefit to the corporate "contributors" and to the for-profit business of your founder, rather than exclusively for the community as a whole.

You describe the corporate sponsors as donors. But persons who contribute to an organization in proportion to the benefits they expect to receive are engaging in a commercial transaction for private, not public, benefit. Ginsberg v. Commissioner, 46 T.C. 47 (1966). Your relationship with the corporate sponsors has measurable benefits for them, which you describe. You have told them that the mobile application provides a platform for marketing, promotion, and a powerful incentive to attract and retain customers. Your mobile software application also provides valuable information about customers. You are helping to attract customers, and provide advertisements to them. Similar to the organization in Church by Mail v. Commissioner, T.C. Memo. 1984-349 (1984), aff'd 765 F. 2d 1387 (9th Cir. 1985), your entire enterprise is carried on in such a manner that for-profit merchants benefit substantially from your operations.

Tax law limits the kinds and amounts of acknowledgement that a charity may make to its corporate sponsors, precisely to prevent more than incidental private benefit. If the acknowledgement exceeds those limitations, the corporate donations must be treated as taxable business income. I.R.C. § 513. The corporate donor may not expect or receive a substantial return benefit, such as advertising the corporation's services or products by messages containing comparative language, price information, or inducements to purchase or use the products. You offer to potential donors various opportunities to advertise to the users of the mobile application via text, graphics, and video. You have not represented that you would restrict these opportunities to acknowledging the name or logo of the business. You have also

said that the businesses could use your application to pass on coupons or other inducements. Therefore, your activities will not meet the definition of qualified corporate sponsorship.

Your operations also provide specific and substantial benefits to the for-profit business owned by your founder. You were an early customer of your founder's business, and paid it for your license, technical support and hosting. Whether you paid fair market value for such use is not conclusive. Church by Mail v. Commissioner, T.C. Memo. 1984-349 (1984), aff'd 765 F. 2d 1387 (9th Cir. 1985) at 1392.

Common control of an exempt organization and a commercial business presents a risk of private benefit, which is more serious if the entities engage in transactions with each other. P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984) (scholarship supporting bingo games purpose to attract additional customers to lounge owned by founders), and Int'l Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36 (1989), (educational travel nearly sole client of travel agency owned by founder). While you have terminated the written lease, you will continue to use the mobile application and website developed and maintained by the related for-profit. Although you have severed some of the payments to your founder's Company, your operations are carried on in a manner that benefits the related for-profit. See Church By Mail, T.C. Memo, 1984-349 (1984), aff'd 765 F. 2d. 1387 (9th Cir. 1985).

In addition, your ratio of income-based compensation agreement with Company may result in net earnings inuring to the benefit of private individuals. See Lorain Avenue Clinic v. Commissioner, 31 T.C. 141 (1958).

Upon consideration of all the facts and circumstances, we conclude that more than an insubstantial part of your activities furthers a non-exempt commercial purpose that benefits your donors and the commercial entity owned by your founder. See Treas. Reg. § 1.501(c)(3)-1(c)(1).

Based on the information above, we find that you are not organized and operated exclusively for exempt purposes within the meaning of I.R.C. § 501(c)(3). Therefore, you do not qualify for exemption as an organization described in I.R.C. § 501(c)(3) and you must file federal income tax returns.

Contributions to you are not deductible under I.R.C. § 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.

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. I.R.C. § 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
TE/GE SE:T:EO:RA:T:
Attn:
1111 Constitution Ave, N.W.
Washington, DC 20224

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, Exempt Organizations
Rulings & Agreements