



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201407020**  
Release Date: 2/14/2014  
Date: June 21, 2013  
UIL Code: 501.33-00  
501.35-00  
501.36-04

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

Dear \_\_\_\_\_ :

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

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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

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

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

Sincerely,

Kenneth Corbin  
Acting 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: September 18, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

- S = State
- B = Date
- C = Name of Club
- D = Name of Club
- F = Name of Club
- G = Name of Club
- M = Director/President
- N = Director
- P = Director
- Q = Director
- X = Name of for-profit LLC

**UIL:**

- 501.03-30
- 501.33-00
- 501.32-01
- 501.36-04

Dear :

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

**Issues**

Are you organized and operated for an exempt purpose under section 501(c)(3) of the Code? No, for the reasons set forth below.

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

**Facts**

You incorporated in the state of S on B. Your articles of incorporation state the purposes for which you are organized are athletic.

An additional three page document titled Articles of Incorporation which has not been executed and with no indication of filing with the appropriate state authorities' states you are:

Organized exclusively for charitable and educational purposes for the funding of X, more specifically to assist young girls and boys of the X family of clubs play club ball and to enhance their experience by providing supplies and equipment and to provide fundraising and scholarships to athletes in need so they are able to afford club ball.

X is a for-profit company that owns and operates several clubs in S. X owns and operates clubs C, D, F and G. The relationship you have with X is that they operate the clubs that you service. These clubs are the ones that you help families attend and play for. Your director M is also the director of clubs F and G. Your director N is the director of D as well as operations director of all the clubs. Your director Q is the business manager of all the clubs. Your fourth director is P the spouse of N.

If you do not raise money for X they would raise the club dues passing the expenses to families that you serve. Your work of raising funds for X prevents them from raising their dues. If you did not support X then families you service would not be able to afford to play club ball and X would have to conduct these fundraising efforts or pass the costs to the families.

You are organized and operated solely to provide funding to X and its related programs. You raise funds for these clubs through raffles, cookie dough sale, candle sales and mixed bag fundraisers. Each member family is responsible for selling a certain number of raffle tickets and returning the money collected to you. Members can sell the raffle tickets to a third party or retain and pay for the tickets themselves. A drawing is conducted at a prescribed date and time and prizes are distributed to winners. The remaining funds are then handed over X to provide funding for its programs. X uses the funds raised to purchase balls, carts, nets, poles, pads and other supplies for the clubs. This keeps these costs from being borne by the families that participate in the program.

X charges fees to participate in their programs. You allow your members to opt out of the raffle participation but they have to pay the fees to X. If the members participate in your fundraisers certain percentages of their participation can be credited to their

accounts to offset their costs. You also conduct cookie dough sale, candle sale and mixed bag fundraisers. The companies you use for these fundraisers usually offer from 25-50% of the sales back to the participants which can be used to pay their fees.

Compensation for directors M and Q are an estimated \$12,000 and \$ 9,000 respectively for their efforts in organizing the fundraisers. Coaches who participate in your fundraising program are given gifts and your directors M and Q are compensated based on the hours spent on each fundraiser and the work done throughout the year to organize the fundraisers.

You provided financial data indicating total revenue of approximately \$75000. Expenses for fundraising were approximately \$3,000. Approximately \$22,000 was paid out in raffle prizes; approximately \$18,000 was given to X and about \$11,000 was paid to members to offset their fees (tuition reimbursement) for participation in club programs. Coaches' gifts, professional fees and business credit card payments made up the rest of the expenses.

### Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious, scientific, or educational purposes.

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

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization operates exclusively for exempt purposes if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization will not meet exemption if more than an insubstantial part of its activities fails to further 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 as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather

than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Revenue Ruling 67-149 1967-1 C.B. 133 held that an organization formed for the purpose of providing financial assistance to several different types of organizations which are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 is exempt from Federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 69-175, 1969-1 CB 149, held that an organization formed by parents of pupils attending a private school that provided bus transportation to and from the school for those children whose parents belong to the organization is not exempt from Federal income tax under section 501(c)(3) of the Code. Parents paid an initial family fee and an additional annual charge for each child. The organization's income approximately equaled the expenses involved in its operations. When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children, under the circumstances described, the organization enabled the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than public interest.

Revenue Ruling 76-206 1976-1 C.B. 154 held a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs, all of which activities tend to increase the station's revenues, does not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 80-302 1980-2 C.B. 182 held that an organization that limits its membership to descendants of a particular family, compiles family genealogical research data for use by its members for reasons other than to conform to the religious precepts of the family's denomination, presents the data to designated libraries, publishes volumes of family history, and promotes social activities among family members does not qualify for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over est of Hawaii, a non-profit entity, through contractual arrangements. The question for the court was not whether the payments made to the for-profits were excessive, but whether they benefited substantially from the operation of the applicant. The Tax Court concluded that the for-profits were able to use the non-profit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion. Consequently, est of Hawaii did not qualify as an organization described in section 501(c)(3).

In Church by Mail, Inc. v. Commissioner, T.C. Memo 1984-349, aff'd 765 F. 2d 1387 (9<sup>th</sup> Cir. 1985), the Court affirmed a Tax Court decision. Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. A for-profit company, controlled by the same ministers, provided the printing and the mailing. The services were provided under two contracts. The contracts were signed by the two ministers for both the organization and the for-profit company. The organization's business comprised two-thirds of the overall business done by the for-profit company. The court determined that there was ample evidence in the record to support the finding that the organization was operated for the substantial non-exempt purpose of providing a market for the services of the for-profit company. 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." Moreover, the ministers' dual control of both the Church and the for-profit company enables them to profit from the affiliation of the two entities through increased compensation.

## **Application of Law**

### **Organizational test**

You do not meet the organizational test requirements of section 501(c)(3) of the code and Section 1.501(c)(3)-1(a)(1) of the regulations since the filed copy of your articles of incorporation does not contain the necessary purpose and dissolution clause required for exemption. Also additional documentation provided by you titled Articles of Incorporation do not indicate they were filed with the appropriate state officials. Article II of your articles of incorporation states you are formed for the purpose of funding X and to assist boys and girls who are members of X family of clubs. Neither the funding of for-profit X or the support provided to its member families are charitable purposes within the meaning of section 501(c)(3) of the code.

You are not described in section 501(c)(3) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations. You fail the operational test for exemption under 501(c)(3) because you are operated for the non-exempt purpose of raising funds for a for-profit entity and to help offset member fees and expenses..

You are not described in Section 1.501(c)(3)-1(c)(1) of the regulations. Your activities do not further any exempt purposes. In fact they provide funds to a for-profit club and benefits to private individuals who are the members of these clubs.

You are operated for the private benefit of X and its various clubs for whom you raise funds. The funds you raise are also used to pay for equipment used at these clubs and to subsidize the fees of the members of the clubs. You are therefore not operated exclusively for exempt purposes as described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Your net earnings from your fundraisers are transferred to for-profit company X. Your directors M and Q are compensated from the proceeds of these fundraisers and your coaches are also given gifts for raising funds. In addition you have member accounts to which a portion of the fundraising proceeds are credited for use towards their member dues. Therefore your net earnings inure in whole or in part to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c) and you are not as described in Section 1.501(c)(3)-1(c)(2) of the regulations.

You are not like the organization in Revenue Ruling 67-149 that provided financial assistance to organizations exempt under section 501(c)(3). Your assistance is provided to a for-profit club.

Like the organization in Revenue Ruling 69-175 you were formed to benefit a group of individuals who are members at the various clubs owned by X. By raising funds to provide for the financial obligations of the members you are operating for their respective private interests.

Like the organization in Revenue Ruling 76-206 you are operated for the benefit of the for-profit X and the various clubs that X operates.

You limit your membership to members who belong to the clubs owned by X. You use the funds raised by your fundraising operations to provide these members with funds to meet their members' financial obligations at the various clubs owned by X. Like the organization in Revenue Ruling 80-302 you serve private interests of your members and do not qualify for exemption under section 501(c)(3) of the code.

You are similar to Better Business Bureau of Washington, D.C., Inc. because you too have a substantial non-exempt purpose. Your primary purpose is to operate for the



benefit of private business interests by raising funds for a for-profit entity and the interests of your members.

You are similar to est of Hawaii, supra, because X, a related for-profit, has indirect control over you. Your officers and directors are all directors or officers of the various clubs operated by X. They will raise funds through members who participate in activity in the various clubs. The directors and officers use you as an instrument to enhance the profits of the for-profit X.

Further, as shown in Church by Mail, supra, your governing body's dual control over you and X shows the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from your operations. Moreover, the directors and officers dual control of both you and X enables them to profit from the affiliation of the two entities through increased compensation.

### **Applicant's Position**

Your work prevents the clubs from having to raise the dues of their participants. Many of the participant's families would not be able to afford club volleyball and X would need to conduct fundraising efforts on their own or pass the costs on to the families. If you did not raise the money, then X would have to raise their club dues and pass on the expenses to the families you serve. Without your support the families you service will be unable to afford to play ball at the clubs. You are requesting exemption to enable you to help defer these costs while helping others save money.

### **Services Response to Applicants Position.**

Raising funds to provide for the expenses of a for-profit club is not an exempt purpose. In addition the use of funds raised by your members through raffles and other fundraisers to pay their financial obligations offers a private benefit to your members. As a result, you do not meet the requirements for tax exemption.

### **Conclusion**

Based on the facts, we have concluded that you fail to qualify for exemption under section 501(c)(3) of the Code. Your activities of raising funds for X a for-profit organization do not further an exempt purpose. The raising of funds by member families and the use of such funds to cover the costs of membership confer private benefit to the member families. Your earnings also inure to the benefit of your directors and officers who are also directors and officers of the various clubs operated by X, to X

the for-profit business, and to your member families who receive direct financial benefits from you.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of why you disagree. Your protest statement must be filed within 30 days of the date of this letter and should include:

- Your organization's name, address, EIN number and a daytime phone number.
- A statement that the organization wants to protest the proposed determination.
- A copy of this letter showing the findings that you disagree with (or the date and IRS office symbols from the letter.
- An explanation of your reasons for disagreeing including any supporting documents.
- The law or authority if any, on which you are relying.

The protest statement may be signed by one of your officers or your representative. 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*.

The protest statement should also include the following declaration.

*"Under penalties of perjury, I declare that I have examined this protest 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."*

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

*Your protest will be considered incomplete without this statement.*

*If an organization's representative signs and submits the protest, a substitute declaration must be included stating that the representative prepared the protest and any accompanying documents; and whether the representative personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true, correct.*

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. In that case you must file a 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](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to seek a declaratory judgment in court at a later date because the court requires that you first exhaust administrative remedies at the IRS. 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  
Rulings and Agreements

Enclosure: Publication 892