



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201416010**
Release Date: 4/18/2014

Date: January 22, 2014

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00; 501.33-00; 501.36-04

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.

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

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,

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: December 3, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B= state
C= individual
D= title
E= title
F= organization
G= organization
H= program
x= date
y= dollar amount
z= dollar amount

UIL:

501.03-00
501.33-00
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 your services commercial in nature and do they serve a substantial non-exempt purpose? Yes, for the reasons described below.
- Are you operating exclusively for exempt purposes as described in section 501(c)(3) of the Internal Revenue Code? No, for the reasons stated below.

Facts

You incorporated on x pursuant to the provisions of the non-profit laws in the state of B. You incorporated for charitable and educational purposes, and:

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

1. "To instruct church and charity employees and volunteers with respect to sound fundraising practices;
2. To conduct and publish research with respect to the efficiency of charities;
3. To contribute funds to organization's exempt from tax under section 501(c)(3);
4. To engage in other charitable and educational activity as determined by the board of directors."

You are governed by a board of six directors and two officers. Your two officers are former officers at F. F is a for-profit company that offers charitable financial planning products, manages donor advised fund accounts and provides administrative services for charitable projects. Presently, none of your officers or directors are members or officers of F.

Although your Articles of Incorporation state you "shall not have members," your statement of revenues and expenses reported membership fees as your primary income source. For an annual membership fee of y dollars your members receive a book, D, and its accompanying CD and Flash Drive, another book, E, and a DVD describing H, a technique for fundraising. The cost of annual membership also includes four hours of instruction and newsletters for members during the year. D and E are authored by C, your president.

The annual membership fee was determined by the costs a third party publisher charges to you for the books and materials. The books and materials are available to non-members at a charge above the cost to produce the materials. The purpose of charging a higher fee to non-members is to cover the costs of the materials and to encourage people to join instead of purchasing the materials separately. You explained "by joining, a member shall not only receive the materials free of charge, he shall also provide a contribution towards you, receive newsletters, and benefit from the educational training and programs you offer to members."

C has the copyrights to the materials you use. You stated that C does not charge you a fee and has given you a royalty-free license for using the copyright materials. There is no written agreement between you and C for using the copyright materials.

You provided copies of the two books (D and E) written by C. Although C was the author, F was named as the copyright owner. You explained that C is no longer an officer of F and the copyright of E was assigned back to C when C left F. You explained there is no written documentation of the copyright transfer. Future editions of E will name C as the copyright owner.

The given purpose in the foreword portion of E is to provide philanthropy development training to a cadre of members of G. G is an association of members who are primarily

financial service professionals. The book explains that G is an essential marketing arm of F. The content of the book provides information about philanthropy and establishing charitable projects or foundations at F. E also describes the charitable financial planning products available at F. The foreword further explains that upon completion of both "practicum" and "academic" success a certificate in philanthropic development is awarded.

Despite the content in E you state that you do not train or certify financial advisors that provide similar services as the philanthropy development consultants who market products for F.

Although E discusses the advantages of establishing charitable projects and foundations at F, you claim you are "completely unrelated to F." You are "not taking over the training activities of F, nor (are you) assuming any activities or assets of F." You also explained that the copy of E that was provided is an older version. "The reprint will not include the chapter on setting up donor advised fund accounts at F or at any affiliated organization." No further details were provided on the reprinted, current version.

The DVD you provide to members is instruction on a fund raising compensation plan called H. H was described as setting aside a predetermined percentage (up to 20%) of funds raised into a special account. The funds in the account are used to pay for professional fundraising purposes. H is also promoted in E as a service or product used by F. E further explains that H allows 20% of money raised for charity can be held for hourly compensation in a special escrow account.

Your fundraising training will cover the material in the books and in the accompanying CD. You intend to present information on "how to" as well as helping to design and implement fundraising programs for your members. Non-members are also welcome at the training sessions.

In addition to the books and DVD, members receive assistance from you in developing and implementing fund raising programs. You provided a sample agreement for fund raising training and planning. Your obligations under this fundraising agreement are to provide "a growing cadre of financial assistants who are both trained and motivated to raise funds" for your clients projects and programs. Compensation to you will be 5% of the net value of the funds raised. The 5% is calculated before deducting the amount put into the escrow agreement for H. Your client must also pay for your travel and per diem.

For a minimum initial contribution of z dollars an individual can apply to you to begin a project. You "will help recruit, train and motivate a growing cadre of people ready to raise funds for all appealing charitable projects." You submitted a sample copy of an

application to begin a project at your organization. This application explains that all contributions to the project will be entirely under your authority. You train and provide a "Project Manager whose tenure is completely under the authority (of you)." Your services also include training a cadre of people who can assist in the operations of a member's charity.

Along with the above you have generated six newsletters. The topics of those newsletters have been:

1. The Magic of the H.
2. The Magic of the Financial Professional
3. H – Legal Opinion
4. Helping a Charity Reach Financial Goals
5. Motivating Direct Solicitation Levels
6. Revolving Loan Fund and the Importance of Endowment

When asked, you stated the revolving loan fund is an idea that waits IRS approval and the setting aside of funds and that there was "no agreement at this time". No further details were provided.

The only revenue you have projected is from membership fees. You list two primary expenses – professional fees and other, which includes travel, conference and other fees associated with educating and training organizations through the US on fundraising methods. You did not further elaborate on who would be in receipt of the professional fees, however, you did indicate that going forward you may have contractual agreements with members to provide services including reasonable payments for assistance in the design and implementation of fund raising programs.

Law

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for, charitable, scientific, or testing for public safety, among other purposes.

Section 1.501(c)(3)–1(c)(1) of the Income Tax Regulations provide that an organization is operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). It is not so operated if more than an insubstantial part of its activities do not further those purposes.

Section 1.501(c)(3)–1(c)(2) of the regulations provides that an organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private individuals.

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. It further states that "to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests . . ."

In Revenue Ruling 69-528, 1969-2 CB 127, an organization that was regularly carrying out an investment service business that would be an unrelated trade or business if carried on by any exempt organization on whose behalf the organization operated, was not found to be exempt under section 501(c)(3). The organization was formed to provide investment services on a fee basis exclusively to organizations exempt from federal income tax under section 501(c)(3) of the Code. It receives funds from the participating exempt organizations, invests in common stocks, reinvests income and realized appreciation, and upon request liquidates a participant's interest and distributes the proceeds to the participant.

In Revenue Ruling 71-529, 1971-2 CB 234, a nonprofit organization that provided assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualified for exemption under section 501(c)(3) of the Code. [Revenue Ruling 69-528, distinguished]

In Revenue Ruling 72-369, 1972-2 CB 245, an organization that was formed to provide managerial and consulting services at cost to unrelated exempt organizations was not found to be exempt under section 501(c)(3). [Revenue Ruling 71-529, distinguished]

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 a trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that was ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It 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." And finally, the corporation did not limit its clientele to organizations that were section

501(c)(3) exempt organizations.

In Living Faith Inc. v. Commissioner, 60 T.C.M., 710, 713 (1990), aff'd 950 F. 2d 365 (Cir. 1991) the court said that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus it did not qualify for exemption under Section 501(c)(3). The appellate court stated the factors that the court relied upon to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

1. The organization sold goods and services to the public.
2. The organization was in direct competition with for profit businesses.
3. The prices set by the organization were based upon pricing formulas common in retail food businesses.
4. The organization utilized promotional material and "Commercial catch phrases" to enhance sales.
5. The organization advertised its services and food.
6. The organization did not receive any charitable contributions.

Application of Law

You are not described in section 501(c)(3) of the Internal Revenue Code because you are not operated for a 501(c)(3) purpose but rather in a commercial manner. Your consulting, management, products and fundraising services and fee structure are similar to the services provided by commercial businesses. Your operations are similar to F, a related for profit entity. You also use the same training materials that promote F products, resulting in more than insubstantial private benefit. These services demonstrate more than an insubstantial part of your operations do not further exempt purposes as described in section 1.501(c)(3)-1(c)(1) of the regulations.

You publish and distribute materials for a fee that are owned by your President, C. Although you claim to be no longer associated with F, your services and products are similar to and in competition with F. C, a former officer at F, has written the books that train professionals who market F products. The book you provide to members and non- members (E) also promotes the fundraising plan (H) that is used by both you and F. Although you claim C does not charge you a fee, there is no written documentation or agreement to demonstrate this arrangement does not allow net earnings to inure to C which prevents you from qualifying for exemption per section 1.501(c)(3)-1(c)(2) of the regulations. Section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private

interest. You have failed to establish how your commercial operations, to “recruit, train and motivate a growing cadre of people” that provide management, consulting and fundraising services, serves a public rather than a private interest. Further, you have failed to establish earnings will not inure to C, either directly or indirectly, through F.

Similar to the organization described in Revenue Ruling 69-528, you are carrying on a trade or business. You characterize your materials and services as free to members. However, your membership fees are determined by the cost you incur to provide services and published materials. You also make your products and services available for sale to the general public above cost. Thus, you are providing services to members at cost while non members pay higher charges for the same services.

You differ from the organization described in Revenue Ruling 71-529 because your managerial and consulting services are not priced to provide assistance substantially below cost. You are similar to the organization described in Revenue Ruling 72-369 as you are providing services to unrelated exempt organizations under 501(c)(3) at cost.

Similar to the organization in Better Business Bureau of Washington, you operate with an underlying commercial motive. This is a substantial non exempt purpose disqualifying you from exemption.

Similar to the organization in B.S.W. Group, your primary objective appears to be not charitable or educational but commercial. Your sole projected source of income is fees – both from members and non-members from the sale of your books and materials. You are charging prices that are at or above cost – not below. Your activities are promoted to any organization or individual interested in fundraising. You have been unable to substantiate that your activities are not conducted in a commercial manner.

Like the organization in Living Faith Inc. v. Commissioner you sell goods and services to the public, including your instructional course and fund raising plan (H), in direct competition with other for-profit entities offering similar products, including F. Similar to the factors outlined in the ruling, you set prices to cover costs, offering memberships as incentives to receive your products and services. Your materials promote the products and services of C, F and H. You market your plans and have no projections for charitable contributions.

Applicant's Position

It is your contention that your programs are educational in nature and help further exempt purposes as described under section 501(c)(3) of the Code.

Service Response to Applicant's Position

Although you provide instruction on fundraising, your consulting, management, and fundraising services are more than an insubstantial part of your operations and are

structured in a nonexempt commercial manner. Like the organization in Better Business Bureau of Washington, *supra*, a substantial part of your activities consists of a non-exempt purpose that precludes exemption.

Conclusion

Because you are operating for non-exempt commercial purposes and in furtherance of private, rather than public, interest, you do not meet the operational test as described in section 1.501(c)(3)-1(c)(1) of the regulations and therefore do not qualify for exemption under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, 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, under the heading Filing a Protest. The statement of facts (item 4) must 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 relevant facts, and such facts are true, correct, and complete."

The declaration must be signed by one of your officers or trustees with personal knowledge of the facts.

Your protest will be considered incomplete without this statement.

If your representative submits a protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest 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
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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