



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201423031**
Release Date: 6/6/2014
Date: February 5, 2014
UIL Code: 501.33-00

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

Dear :

This is our final determination that your request for a group ruling for your subordinates under the provisions of Revenue Procedure 80-27 has been denied. 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.

Each of your subordinates may, however, file for tax-exempt status on its own by filing Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, and paying the appropriate user fee.

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

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

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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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

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 4, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

C =
D =
N =
P =
Q =
R =
T =
J =

UIL:

501.03-27
501.33-00

Dear :

We have considered your request for a group ruling for your subordinates pursuant to the provisions of Revenue Procedure 80-27, 1980-1 C.B. 677. Based on the information provided, we have concluded that you do not qualify for a group ruling under section 501(c)(3) of the Internal Revenue Code (Code). This letter supersedes our letter dated July 8, 2013 which proposed to deny your group ruling request. The basis for our conclusion is set forth below.

Issue

- Is it in the interest of sound tax administration to approve your request for a group ruling? No, for the reasons described below.

Facts

You are a national (central organization) sorority of registered professional nurses and nursing
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students. You have 81 graduate chapters and 39 undergraduate chapters, chapters are grouped into five regions, each chapter and each region is separately organized. Chapters and regions (subordinate units) are affiliated to you. You were incorporated under the laws of C. Your Articles of Incorporation, since amended, state that you are organized exclusively for charitable, religious, educational and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code. You received recognition as tax-exempt under section 501(c)(3), and as a non-private foundation described in sections 509(a)(2). The facts presented here are from your group ruling request.

Your affiliation process between subordinates and the central organization was described in Article XI of your bylaws, and in Section Four of your operations manual.

Article XI – Chapters, of your bylaws, indicate the following:

- You are composed of graduate and undergraduate chapters,
- A group of nine or more persons pursuing nursing in an accredited program for the preparation of registered nurses is eligible to form an undergraduate chapter,
- A group of twelve or more registered professionals nurses is eligible to petition for a chapter,
- Chapters must submit their bylaws to the Chairman of the National Bylaws committee for approval every two years on the odd year or whenever changes are made.

Section four of your operations manual describes the policies and functions of a subordinate unit, describes the criteria to become a subordinate unit which is the same as the criteria described in your bylaws above, and describes the process by which a subordinate unit is chartered, which mainly consists of a formal request to organize, followed by the submission of sample bylaws, fundraising and service project.

Your subordinate units follow your guidelines, and that like you, they would serve as service organizations for disease prevention and health promotion, for encouraging young people to broaden their skills base, particularly in nursing science. Your bylaws state that your objects are:

- To promote a higher educational background for the nursing profession by correlating all branches of the profession,
- To bring a closer and more friendly feeling among all of its members, in an effort to elevate the general plane of nursing,
- To promote a closer relationship among members of the nursing profession,
- To stimulate a greater intellectual attainment and higher standards in the nursing profession,
- To establish affiliated chapters; pledge clubs; interest clubs, auxiliaries, and other affiliated organizations to be determined from time to time by its bylaws, in any one, or more of the states, cities, colleges, or campuses throughout the United States and the world, under such terms and conditions as may be prescribed by its bylaws, proper charters, certificates, or other documents evidencing its affiliation you.

Your operations manual describes the following programs:

- Disease prevention and health promotion, consisting of health screenings aimed to identify health problems; a list of health care referrals is used during screenings,
- Health education programs, aimed to address health problems on high risk groups, vulnerable populations and under-served populations,
- Education and scholarship, aimed to provide financial assistance to nursing students,
- Leadership development programs, aimed to assist the membership in development of effective leadership skills,
- Recruitment and retention programs, aimed to promote interest in nursing careers,
- Programs for the elderly, aimed to serve senior citizens,
- Programs for boys and girls, aimed to offer the youth experiences with health care,
- Research and development, aimed to assist in grant writing,
- Love and caring programs, aimed to serve the membership when members are ill, experiencing difficulty, or limited in some way; activities include but not limited to phone calls, visitation, transporting and special assistance

The purposes typically stated in the bylaws of a subordinate unit are:

- To encourage the pursuit of continuing education among members of the nursing profession,
- To have a continuous recruitment program for nursing and the health professions,
- To stimulate a close and friendly relationship among the members,
- To develop working relationships with other professional groups for the improvement and delivery of health care services,
- To constantly identify a corps of nursing leaders who will function as agents of social change on the national, regional and local level.

Your operations manual includes a "Legislative/Health, Social Policy". It evaluates and monitors national legislative, economic and other policy and professional issues impacting health care. It maintains a network to disseminate information to members timely, and prepares position papers with recommendations for action. Subordinates' bylaws describe a legislative health social policy committee as follows:

- Evaluates issues facing nursing an health care with a focus on areas that the subordinates can and should be addressing,
- Evaluates local and state legislative matters that impact on health issues of concern to nursing and nurses,
- Advises of possible directions to be taken by the subordinates to address issues that have been evaluated,
- Prepares appropriate position papers.

When we asked for a description of the legislative activities conducted by central and subordinate units, you indicated you had no legislative activities and you changed the name of the legislative committee to "Health Advocacy and Social Policy Committee".

Your subordinate units would be subject to your general supervision or control. When we asked you to describe the control and supervision you had over your subordinate units, you indicated it was described in your bylaws. Your bylaws indicated that subordinate units would have knowledge and would comply fully with all provisions of your bylaws, and that violations may result in the imposition of penalties including withdrawal of chapter privileges, suspension and revocation of chapter charter.

The purposes and activities of each subordinate unit, including the sources of receipts and the nature of expenditures, would be similar to yours. When we asked you to describe the process you use to determine whether a subordinate unit is organized and operated exclusively for 501(c)(3) purposes, you implemented a 501(c)(3) Unit Compliance Policy for Inclusion in Group Exemption, whereby you would review the activities of a subordinate unit to determine whether to include it into the group.

None of your subordinate units received an individual exemption letter from the Internal Revenue Service. You would provide a list of the names, mailing addresses and employer identification numbers as subordinate units requests were submitted for inclusion under the group. Until a subordinate unit satisfied your requirements, it would not qualify under the group. We asked you to submit a list of all the subordinate units that would be included in the group exemption and we requested specific information about them. Initially, we agreed that you would provide information for a representative sample of fifteen subordinate units. For each, we asked you to provide: Employer Identification Number (EIN), conformed copies of organizing documents, income statements for the last three years, and detailed description of their activities. You provided information for fifteen subordinates, of which you later excluded fourteen. Information provided for these fifteen subordinate units revealed that most of them were already individually exempt under section 501(c)(3) of the Code, one was automatically revoked for failure to file Forms 990 for three consecutive years as required by law, some failed to meet the organizational test, and some conducted social activities such as annual barbeque, bus outings, Christmas Brunch, networking, casino trips, retreats, etc.

Subsequently you revised your list to include the following six subordinate units:

- D

D was originally organized in 1994 as an unincorporated association. It was organized as a membership organization required to pay dues. However, D's projected budgets showed all of its revenues from contributions from the public. D incorporated in 2011. D's activities included fellowship "Chew and Chat" activities, Appreciation day barbeque for all the family and friends, and attendance to luncheons.

- N

N was originally organized in 1965 and incorporated in 1996. N's Articles of Incorporation do not meet the organizational test for exemption under section 501(c)(3) of the Code. You did not provide a description of N's activities. Description of N's projected budgets shows that N's revenues come from contributions from the

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public. N did not file Forms 990 for three consecutive years.

- P

P was originally organized in 1955 as an unincorporated association. It was organized as a membership organization required to pay dues. However, P's projected budgets showed all of its revenues from contributions from the public. P has a "Social Amenities Committee" as well as a "Legislative/Health, Social Policy Committee". P incorporated in 2010. You did not provide a description of P's activities nor a copy of its Articles of Incorporation.

- Q

Q was originally organized in 1982 as an unincorporated association. It was organized as a membership organization required to pay dues. Q incorporated in 2011. You did not provide a description of Q's activities nor a copy of its Articles of Incorporation.

- R

R's bylaws shows that R may have been originally formed in 2001 and describes a membership organization funded by dues; however their projected budgets show R's revenues come from contributions from the public. R incorporated in 2011. R's Articles of Incorporation do not meet the organizational test for exemption under section 501(c)(3) of the Code. You did not provide a description of R's activities.

- T

T is one of your regions. T's bylaws show that T was originally formed in 1953 as an unincorporated association. T's organizing document does not meet the organizational test for exemption under section 501(c)(3) of the Code. T did not file Forms 990 for three consecutive years.

Almost all of the six subordinates included in your list were originally organized as unincorporated associations and recently incorporated, such as D, P, Q, R, and N. You failed to provide copies of organizing documents for P and Q. You failed to provide a description of activities for N, P, Q, and R. Organizing documents for R, N, and T did not meet the organizational test for exemption under section 501(c)(3) of the Code.

Law

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual and no substantial part of the activities of which are attempting to influence legislation.

Section 6033(j)(1) of the Code automatically revokes the tax-exempt status of any organization

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described in section 6033(a)(1) that fails to file a required annual return for three consecutive years or any organization described in section 6033(i) that fails to file an annual return or notice for three consecutive years. Revocation under section 6033(j)(1) is effective on and after the date set by the Secretary for the filing of the third annual return or notice.

Section 6033(j)(2) of the Code provides that any organization that has had its tax-exempt status automatically revoked under section 6033(j)(1) must apply with the IRS in order to obtain reinstatement of its tax-exempt status, regardless of whether the organization was originally required to apply for recognition of its tax exemption.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (Regulations) provides that, in order to be exempt as an organization described in section 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.

Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the Regulations provide that an organization is organized exclusively for one or more 501(c)(3) exempt purposes only if its articles of organization:

- Limits the purposes of such organizations to one or more exempt purposes,
- Does not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes, and
- Permanently dedicates the organization's assets to 501(c)(3) purposes on dissolution.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization's assets must be irrevocably dedicated to exempt purposes. An organization's assets is considered irrevocably dedicated to an exempt purpose if, upon dissolution, such assets will, by reason of a provision in the organization's organizing instrument or by operation of law, be distributed for one or more exempt purposes. If a named beneficiary is to be the distributee of an organization's assets, it must be one that would qualify and would be exempt within the meaning of section 501(c)(3) of the Code at the time the dissolution takes place. Since the named beneficiary at the time of dissolution may not be qualified, may not be in existence, or may be unwilling or unable to accept the assets of the dissolving organization, a provision should be made for distribution of the assets for one or more exempt purpose in the event of any such contingency.

Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d) of the Regulations defines charitable and educational purposes as follows:

Charitable defined. The term charitable is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in

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section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an action organization of any one of the types described in paragraph (c)(3) of this section.

Educational defined--(i) In general. The term educational, as used in section 501(c)(3), 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.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 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.

Revenue Procedure 80-27, 1980-1 CB 677 sets forth procedures under which recognition of exemption from federal income tax under section 501(c) of the Internal Revenue Code may be obtained on a group basis for subordinate organizations affiliated with and under the general supervision or control of a central organization. This procedure relieves each of the subordinate organizations covered by a group exemption letter from filing its own application for recognition of exemption. This procedure requires that a central organization provides the following information regarding its subordinate organizations: (a) information verifying the existence of the relationships required by section 4.02; (b) a sample copy of a uniform governing instrument (charter, trust indenture, articles of association, etc.) adopted by the subordinates; or, in the absence of a uniform governing instrument, copies of representative instruments; (c) a detailed description of the purposes and activities of the subordinates including the sources of receipts and the nature of expenditures; (d) an affirmation that, to the best of the officer's knowledge, the purposes and activities of the subordinates are as set forth in (b) and (c) above; (e) a statement

that each subordinate to be included in the group exemption letter has furnished written authorization to the central organization as described in section 4.03; (f) a list of subordinates to be included in the group exemption letter to which the Service has issued an outstanding ruling or determination letter relating to exemption;

Rev. Proc. 2013-9, 2013-2 I.R.B., sect. 4.03(2) and (3), requires an applicant to submit sufficient information during the application process for the IRS to conclude that the organization is in compliance with requirements of section of the Code under which exemption is claimed before it issues a ruling. The organization must fully describe all of 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 IRS that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the IRS will generally issue a proposed adverse determination letter or ruling.

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 *Phinney v. Dougherty*, 307 F.2d 357 (5th Cir. 1962), the Court of Appeals held that a gift to a fund to acquire and maintain a chapter house for a fraternity did not qualify for exemption as a charitable and educational organization within the meaning of section 501(c)(3) of the Code. The court reasoned that, while this activity furthered educational purposes, it also furthered social purposes; and thus, the organization did not operate exclusively for section 501(c)(3) purposes, and did not qualify for exemption under section 501(c)(3).

In *General Conference of the Free Church of America v. Commissioner*, 71 T.C. 920 (1979), the court held that there was no legitimate legal or constitutional basis for the petitioner to refuse the respondent's inquiries with respect to its activities, operations, and purposes.

In *First Libertarian Church v. Commissioner of Internal Revenue*, 74 T.C. 396 (1980), the court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a non-exempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non-exempt purpose. The court explained that "clearly the regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) will be denied."

Analysis

Based on the information you submitted, and for the reasons explained below, it is not in the

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interest of sound tax administration to approve your request for a group ruling because you have failed to clearly establish qualification for exemption under section 501(c)(3) of the Code, for your subordinate units, as required in Rev. Proc. 2013-9.

You failed to show subordinate units meet the operational test for exemption under section 501(c)(3) of the Code, and failed to show the operation of the subordinate units would not result in more than insubstantial furtherance of social and recreational purposes. The information you submitted did not clearly delineate the activities performed by subordinate units. You did not clearly state the extent to which subordinate units conduct social activities.

You currently have over one hundred subordinate units. From the original list of fifteen subordinate units you proposed to include in the group exemption, some were already individually exempt, some conducted activities such as networking, retreats, trips, brunches, teas, memorial services in memory of past members, Founders Day celebration, etc., one was automatically revoked for failure to file three consecutive returns. Upon our questioning regarding the above referenced issues, you excluded thirteen of your initially proposed list of fifteen and revised your list to include only six subordinate units to the group exemption. From the description of specific activities you provided for each of these six subordinate units, it was unclear whether subordinate units operated exclusively for one or more tax exempt purposes as required by section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(1) of the regulations. It was unclear whether activities conducted by subordinate which furthered social or recreational purposes represented less than insubstantial part of their total activities.

You failed to establish that the general supervision or control you exert over subordinate units enables you to determine whether your proposed subordinate units comply with the section of the Code under which you requested group exemption. You first proposed to include fifteen subordinate units in the group exemption, upon our questioning regarding issues presented within those fifteen subordinate units (some were already exempt, some did not meet the organizational test, one was automatically revoked due to failure to file three consecutive returns) you excluded thirteen. Subsequently, you revised your list of subordinate units to be included in the group exemption; your final list included only six subordinate units: N, D, P, Q, R and T. You did not include others because they did not request to be included or they did not meet exemption requirements. Of the six subordinate units, three, N, R, and T, failed to meet the organizational test of exemption under section 501(c)(3). For Q, you failed to provide a copy of its organizing document. The description of specific activities conducted by subordinates were insufficient to determine whether activities conducted by subordinates which further social purposes were less than insubstantial compared to their total activities. N did not file a required annual return, Form 990, for three consecutive years since 2007. Therefore, N is automatically revoked under section 6033(j)(1) of the Code. Section 6033(j)(2) requires N to apply for reinstatement to receive recognition of exemption. As a result, N is currently unable to join a group exemption.

As a central organization, despite the affiliation process you had, and the general control or supervision you had over your subordinates (with the newly implemented Unit Compliance Policy for Inclusion in Group Exemption), you failed to identify that N did not file three consecutive returns and that as a result it was not eligible to be included in the group. You failed to determine that three, N, R, and T, did not meet the organizational test for exemption under

section 501(c)(3) of the Code. You failed to determine that activities conducted by your subordinated units, as reported to you, were insufficient to determine that social activities were insubstantial compared to the total activities conducted by subordinate units. Given that you currently have over one hundred graduate, undergraduate, and regional chapters, you failed to demonstrate that you would efficiently conduct your function of adding and excluding subordinates to and from the group exemption. Accordingly, you failed to satisfy Rev. Proc. 80-27 to have a general control and supervision over your subordinate units.

Operational and Organizational Test

Organizations described in section 501(c)(3) of the Code must be organized and operated exclusively for one or more exempt purposes specified in the regulations, which include charitable or educational purposes. See section 1.501(c)(3)-1(a)(1) of the regulations.

To be operated exclusively for one or more exempt purposes, an organization must engage primarily in activities that accomplish one or more exempt purposes. However, if more than an insubstantial part of the organization's activities is not in furtherance of an exempt purpose, it is not engaged primarily in activities that accomplish an exempt purpose. See section 1.501(c)(3)-1(c)(1) of the regulations.

The information provided for your initial list of fifteen subordinate units to be included in the group exemption indicated that some did not meet the organizational test for exemption under section 501(c)(3) of the Code, and some conducted activities which furthered social purposes such as networking, retreats, trips, holiday brunches, etc. From the final revised list of six subordinate units you proposed to include in the group exemption, you did not provide a copy of the Articles of Incorporation for Q. Three, N, R, T failed the organizational test for exemption under section 501(c)(3) of the Code. D conducted activities such as fellowship "Chew and Chat" activities, appreciation day barbeque for all the family and friends, and attendance to luncheons.

You failed to establish that your subordinate units met organizational requirements for exemption under section 501(c)(3) of the Code because one, Q, did not submit a copy of their Articles of Incorporation, and three, N, R, T, did not meet the organizational test for exemption. You failed to establish that subordinate units met operational requirements for exemption under section 501(c)(3) of the Code, because you failed to provide detailed information regarding activities conducted by subordinates to demonstrate that they did not devote more than an insubstantial percentage of their time to non-exempt purposes.

More than Insubstantial Non-Exempt Purpose

Although an organization may carry on activities that further one or more tax-exempt purposes, it will not be treated as operated exclusively for an exempt purpose if it has a single non-charitable purpose that is substantial in nature, *Better Business Bureau of Washington, D.C., Inc.* Furthermore, a more than an insubstantial social purpose will defeat exemption under section 501(c)(3), *First Libertarian Church v. Commissioner of Internal Revenue*.

Your subordinate units are similar to *Better Business Bureau v. United States*, in that your

subordinate units conduct activities that further non-exempt purposes. Likewise, *First Libertarian Church v. Commissioner of Internal Revenue*, describes an organization where subordinates conducted legislative activities; similarly, your subordinates engaged in more than insubstantial non-exempt purposes by conducting social activities such as fellowship "Chew and Chat" activities, Appreciation Day Barbeque for all the family and friends, and attend luncheons. Bylaws of your subordinates indicated they had a "Social Amenities Committee" as well as a "Legislative/Health, Social Policy Committee". Your subordinate units are similar to the organization described in *Phinney v. Dougherty*, in which the court found that, although a tax exempt purpose existed, the organization also furthered social purposes, and therefore, did not qualify for exemption under IRC 501(c)(3). In *First Libertarian Church v. Commissioner*, the court explained that "clearly the Regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) is denied." You failed to establish that your subordinate units were organized and operated exclusively to promote purposes contemplated under section 501(c)(3). You failed to establish that your subordinate units conducted activities which furthered social purposes were insubstantial compared to their total activities.

Taxpayer's Position

You qualify for group exemption status. You have complied with 501(c)(3) requirements since the date you were granted exemption, and your chapters have complied with your programs. You have exerted zero tolerance compliance and enforcement with your programs. Substantially all of your chapters are newly incorporated within the last year.

Service Response to Taxpayer's Position

You failed to demonstrate that you qualify for group exemption status pursuant Revenue Procedure 80-27, and failed to demonstrate that your chapters did not engage in more than insubstantial non-exempt purposes as required by section 501(c)(3) of the Code. You currently have over one hundred subordinate units, and you were free to select and document the operational and organizational structure for a representative sample of fifteen. Of such sample of fifteen you excluded thirteen upon our questioning regarding issues they presented, such as being already exempt, failing the organizational test, being automatically revoked, and conducting activities that furthered social purposes (Annual National Black Nurses Day Celebration, Nurses Week Celebration, Founder's Day, retreats, casino trips, etc.) From over one hundred subordinate units you ultimately proposed only six to be included in the group exemption because the rest did not request to be part of the group or did not meet exemption requirements. From the proposed six, three did not meet organizational requirements for exemption under section 501(c)(3) of the Code. You did not provide copies of Articles of Incorporation for one. You did not provide sufficient information regarding activities conducted by your subordinate units to determine that activities they conduct which further social purposes were less than insubstantial. You failed to establish your subordinate units met the requirements for the section of the Code under which you requested group exemption. You failed to identify that one did not file Forms 990 since 2007 and that as a result it was not eligible to be included in a group exemption. You did not meet the requirements set forth in Rev. Proc.

80-27 for group exemption because you did not provide sufficient information to establish that your subordinate units qualify for exemption under section 501(c)(3) of the Code. Despite the general control and supervision you exert over your subordinates you demonstrated that you were inefficient when proposing to add/exclude subordinate units to/from the group, since you added subordinate units for which you did not have adequate information to determine whether they met organizational and operational requirements for section 501(c)(3) of the Code; therefore, you did not meet the requirements set forth in Rev. Proc 80-27.

Taxpayer's Protest

You submitted a rather lengthy protest to our previous letter denying your request for a group exemption for your subordinates. Your protest is summarized below:

A. The Subordinates:

1. You state the number of subordinates you proposed was 18, not 15. You then state you excluded 13 of the 18 subordinates for various reasons.
2. You state of the 18 subordinates submitted, seven were found by you via IRS Select Check to be exempt. You then state that none of the five chapters and one region subordinates submitted for consideration were included in that group.
3. You state of the five chapters and one region submitted, there were not any problems with the organizational test.
4. You state you disagree with the activities of the subordinates as described in our previous letter especially the use of the term "social activities."
5. Activities of Specific Chapters: Concerning Chapter D, you characterize our description of the chapter's activities as taken out of context as well as misleading and dispute how we characterize the terms "social," "fellowship," "retreats," "Christmas Brunch," "casino trips," and "bus outings."

In summary, you protest that the activities mentioned above are insubstantial compared to the subordinates' other activities.

B. Recently incorporated chapters:

You agree with our contention that almost all of the six subordinates included in your list were organized as unincorporated associations and recently incorporated. However, you state this exceeds our requirements from Rev. Proc. 80-27, sec. 3.03, that states subordinates may or may not be incorporated but must have an organizing document.

C. Organizing documents for Chapters P and Q:

You disagree with our contention that you failed to provide copies of the organizing documents of chapters P and Q. You state you provided a copy of P's bylaws as well as Q's bylaws. You then provided a copy of Q's article of incorporation with your protest.

D. Description of activities for Chapters N, P, Q and R were not provided:

You disagree with our statement that you failed to provide a description of activities for Chapters N, P, Q and R. You state that a list of activities was submitted in previous correspondence with the Service.

E. Chapters R, N and T did not meet the organizational test under section 501(c)(3) of the Code:

You state you failed to see why the organizational test was not met for the above chapters.

F. Projected revenues from contributions from the public:

You state you fail to see why contributions from the public is a negative factor.

G. One subordinate chapter revoked:

You disagree stating you had no knowledge of a revocation for subordinates N, D, Q, T, R and P.

Service's Response To Taxpayer's Protest

A. The Subordinates:

Whether the number of subordinates that was originally proposed was 18 or 15 and whether the number of subordinates you excluded was 11 or 12 or 13 is immaterial. Since you have over 100 subordinates, we agreed you would submit a representative sample of 15 subordinates. You later reduced the 15 subordinates to six subordinates (five chapters and one region)).

Although you state there were not any problems with the organizational test with the five chapters and one region submitted, our agreement with you was that you would submit a representative sample of 15 subordinates. You systematically reduced the number to six without our consent.

In regards to N's articles of incorporation, the purpose clause in Article II is beyond the scope of section 501(c)(3) purposes and does not meet the requirements of Treas. Reg. § 1.501(c)(3)-1(b)(1).

In regards to T's articles of incorporation, the dissolution clause did not contain an adequate contingency clause. No indication was made concerning T's charitable assets should the

named recipient not remain exempt under section 501(c)(3) of the Code.

Concerning your disagreement with our description of some of your subordinates' activities, we previously asked for information regarding the activities such as retreats, trips, brunches, teas, etc. for subordinate N. We did not receive any response from you concerning N's activities. Therefore, we could not determine if N's activities furthered an exempt purpose. Pertaining to Chapter D's activities, the information previously submitted did not establish that its activities furthered an exempt purpose. D's list of activities was extensive. Included in the activities was a bullet point indicating multiple fellowship activities had occurred which allowed both members and non-members alike to "chew and chat." It was not clear from the information submitted of what these "fellowship" activities consisted and whether such activities were insubstantial.

Another bullet point indicates an Appreciation Barbeque for over 40 family and friends who supported the chapter throughout the year.

We disagree with your contention we took these activities out of context or that we were misleading in presenting these activities.

As stated in *General Conference of the Free Church of America*, supra:

(T)he parties would have us determine whether petitioner ... has an absolute constitutional right to determine the quality and quantity of the information it tenders respondent in seeking an exemption. We must decide this question in the respondent's favor. We believe that the right of an organization to declare what information is or is not relevant in a determination of its tax-exempt status is decidedly beyond the pale ...

B. Recently incorporated chapters:

Our concern with your recently incorporated chapters is that when they were unincorporated associations, they did not file an information return (Form 990 series) for three consecutive years. Since 2007, the Pension Protection Act of 2006, requires an exempt organization to file an annual information return. Five of the six subordinates you submitted had problems in complying with this requirement.

C. Organizing documents for Chapters P and Q:

Concerning Chapter P, you had submitted bylaws when P was an unincorporated association. This also happened with Chapter Q. When our prior adverse letter was issued, you then submitted copy of P's articles of incorporation with your protest but did not submit a copy of Q's articles.

D. Description of activities for Chapters N, P, Q and R were not provided:

Our previous information letter to you requested a list of specific activities for your subordinates.

You provided a general description of the subordinates but then included specific activities of subordinates you proposed to include in the group exemption, some of which you later excluded. Subsequently, you revised the list of subordinates to be included in the group and specific activities for chapters P, Q, R and T were not included. In your protest to our proposed adverse letter, you included activities for the above chapters. Said activities included participating in walks/runs, conducting multiple fellowship activities, barbeques for family and friends, etc. It was not clear from the information provided whether these activities furthered non-501(c)(3) purposes in less than an insubstantial manner.

E. Chapters R, N and T did not meet the organizational test under section 501(c)(3) of the Code:

Similar to our response to item A, number 3 above, the dissolution clause for each of the referenced chapters had the conjunction "or" after the proper 501(c)(3) dissolution clause. Following the conjunction "or" was a specified entity that did not have a contingency clause stating what would happen to the charitable assets should the specified entity no longer be exempt under section 501(c)(3) of the Code.

F. Projected revenues from contributions from the public:

The actual revenues provided for chapters Q and T indicate they properly should be classified as a public charity under section 509(a)(2) of the Code, which is the same classification as you (the central organization). The financial information provided for chapters D, N, P and R appear to be replicas of the same "model projected budgets" showing most of their sources from contributions to the public which would indicate a public charity status under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. The financial information submitted was inconsistent with the rest of the information provided for each subordinate (such as bylaws stating it was funded by dues and activity descriptions stating they were funded by fundraising activities).

G. One subordinate chapter revoked:

This concerns chapter J, which is one of the subordinate units you initially proposed to include in the group exemption request, then subsequently removed from the list of subordinates. J did not file an information return (Form 990 series) for three consecutive years beginning in 2007 as required by the Pension Protection Act of 2006. Because of this, J was automatically revoked pursuant to section 6033(j)(1) of the Code. N also did not file an information return for three consecutive years. As the central organization, you did not identify to us that N was not in compliance with this requirement. Accordingly, N is not eligible to be included in the group ruling. In regards to chapter T, you submitted information with your protest such as T's recent incorporation; therefore, T is not subject to automatic revocation.

In summation, you have not established you have general supervision or control over your subordinates. Accordingly, it is not in the interest of sound tax administration to approve your request for a group exemption.

Conclusion

It is not in the interest of sound tax administration to approve your request for a group exemption because:

- You failed to provide organizing documents for one subordinate as required by Rev. Proc. 80-27.
- You failed to establish subordinates operate exclusively for 501(c)(3) purposes.
- The facts show some subordinates fail the organizational test.
- The facts show some subordinates failed to file Form 990 three consecutive years since 2007 and are subject to automatic revocation procedures pursuant section 6033(j)(1) of the Code, and consequently unable to be part of the group exemption.
- The facts show some recently incorporated subordinates have problems identifying their organizing documents and employer identification numbers, confusing them with those of their prior un-incorporated associations.

Accordingly, your request for a group exemption for your subordinates is denied.

Each subordinate may, however, file for tax-exempt status on its own by filing Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, and paying the appropriate user fee.

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 in Publication 892. These items include:

- The organization's name, address, and employer identification number;
- A statement that the organization wants to protest the determination;
- A statement of facts supporting the organization's position in any contested factual issue;
- A statement outlining the law or other authority the organization is relying on; and
- A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

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

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your protest will be considered incomplete without this statement.

If an organization's representative submits the 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 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

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