



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: 201428022
Release Date: 7/11/2014

Date: July 6, 2006

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00; 501.32-00; 501.36-01

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.

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.

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

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,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: May 11, 2006

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

M = Applicant
N = Applicant's Reference Name
O = Location
P = Governmental Agency
Q = Governmental Agency
R = Date
S = Date
T = Date
U = Year
V = Percentage
W = Date
m dollars = Monetary amount
n dollars = Monetary amount
o dollars = Monetary amount
p dollars = Monetary amount
q dollars = Monetary amount
r dollars = Monetary amount
s dollars = Monetary amount
t dollars = Monetary amount
u dollars = Monetary amount
v dollars = Monetary amount
w dollars = Monetary amount
x dollars = Monetary amount
y dollars = Monetary amount
z dollars = Monetary amount

UIL Nos.:

501.03-00
501.36-01
501.32-00

Letter 4036(CG) (11-2005)

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:

Does the applicant, whose primary activity consist of providing consulting services for a fee and operating in a commercial manner, qualify for exemption under section 501(c)(3) of the Code?

Facts:

You were incorporated in O on R. Your stated purposes are to help organizations obtain Federal exemptions, Federal proposals and Federal benefits. On S, you filed an amendment with O in order to add the provisions necessary to meet the organizational test for section 501(c) (3) of the Code. You filed another amendment on T in order to change your name to M.

Your bylaws indicate membership. They also indicate in Article II that the right or interest of a member shall not terminate except upon the happening of any of the following events: death, resignation, expulsion, dissolution, or liquidation of the corporation.

Page 2 of the Form 1023 lists your activities as helping non profits write proposals for Federal grants. You work to help organizations construct elderly projects by helping them obtain funding.

You have been operating using your own funds since about U. Churches have given you some funding. You now want to apply for a grant from the Compassion Capital Fund for Intermediary Non Profits. A requirement of this program is to have exemption under Section 501(c) (3). You have no other fundraising programs.

You provided additional information that listed your past activities as creating awareness and disseminating information to potential grant requestors. Your staff has approached potential service providers through visits. You have also conducted conferences to small groups and not for profit organizations. Presently you are providing policy consultation as well as information to policy makers of local governments, charities, private sectors, faith based organizations in the areas of affordable housing opportunities for people with disabilities, the homeless, youth at risk, the elderly and other vulnerable populations. You are also providing periodic presentations to faith based organizations and individual organizations with the technical advice necessary to incorporate, establish their board of directors, assist in preparation of Form 1023, provide them with administrative advice, and identify the location and availability of grants to accomplish their social mission and qualify for a federal grant. This process is called a "proposal."

You market ideas through conducting conferences, and having one on one visits with faith based organizations. You have also approached potential service providers in order to prompt them into developing not for profit organizations. Finally, you have visited prominent citizens who wish to serve their communities through the development of non profit organizations.

When someone shows interest in formalizing a community service project, an appointment is scheduled. Your advice consists of giving information on specific grant programs of various governmental agencies. Additionally, you advise the organization on the incorporation process and the IRS's requirements. You also provide an orientation on how to select a board of directors. Furthermore, you file for the Federal Tax Exemption and the local tax exemption and provide information on site location, environmental site assessment, subsoil exploration, and perhaps an additional archeological study. There is a contract executed that indicates all the services provided.

The fees in the contract are:

- | | | |
|----|-----------|----------------------------------|
| 1. | m dollars | User fee for Exempt Organization |
| 2. | n dollars | P |
| 3. | o dollars | US Proposal |
| 4. | p dollars | US Proposal Land Concepts |
| 5. | q dollars | Filing Fee US Proposal |
| 6. | r dollars | Postage Fee US Proposal |
| 7. | s dollars | Q |

The contract indicates you "as the first part" and the client "as the second part." You are also referred to as N. This contract is a renewable 2 year contract and requires the client to pay substantial fees. Initially a t dollars deposit is required. The client agrees to contract with you exclusively for the proposal. The client agrees that the fees for all the pertinent documents come from the grant money awarded. If the client cancels the proposal, the client agrees to pay all incurred expenses in the preparation of such and the proposal will be canceled and retained by your office.

You also provided a sample contract recommended by HUD that is to be used by consultants who provide technical assistance to organizations that develop housing using HUD grants (Contract for Housing Consultant Services 92531-A-CH). This contract establishes payment schedules for services rendered by the consultant. The payment schedule shows that up to % of the consultant's fee is paid at the initial closing. During the construction, up to % less any previous payments will be made. The balance shall be approved for final closing. The contract also provides an incentive of \$ to the consultant for prompt initial closing, construction start, acceptable cost certification, and final closing.

Your future activities consist of broadening services to increase the participation of faith based organizations. You wish to become the first faith based consulting services firm of O.

You also indicated the president's salary as u dollars, the assistant's salary as v dollars. One staff consultant is to receive w dollars per hour and another consultant is to be compensated at x dollars per hour. The Secretary is compensated y dollars per hour and each clerk is to be

compensated z dollars per hour. Salaries are paid on a contract basis. Bonuses are computed as V percent of salaries.

Law:

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from Federal income tax for organizations described in section 501(c)(3). Such organizations are recognized if they are organized and operated exclusively for religious, charitable, and educational purposes.

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

Section 1.501(c)(3)-1(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 of 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.

Sections 1.501(c)(3)-1(c)(2) and 1.501(d)(1)(ii) of the Regulations state that an organization whose net earnings inure to the benefit of private shareholders or individuals or which is operated for the benefit of private interests is not operated exclusively for exempt purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Old Dominion Box Co. v. United States, 477 F.2d 344 (4th Cir. 1973) cert. Denied 413 U.S. 910 (1973) the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Living Faith Inc. v Commissioner, 60 T.C.M., 710, 713(1990), aff'd 950 F.2d 365 (& Cir. 1991) the court wrote 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 court also concluded that competition with commercial firms is strong evidence of a substantial nonexempt commercial purpose. In addition, the court found that the organization used promotional materials to enhance sales, the organization did

not use volunteers but paid salaries and it did not receive charitable contributions.

In Easter House V. United States, 87-2 U.S.T.C, the court refused to grant tax-exempt status to an adoption agency on the ground that it operated in a manner indistinguishable from and in competition with commercial entities. The organization's solicitation practices for clients, its salary structure and staffing, its contract terms and the fact that it was funded by service fees outlined in the contract were indicators that it operated in a commercial manner.

Revenue Ruling 71-529, C.B. 1971-2, 234, describes a situation where an organization controlled by a group of exempt organizations provided investment management services for a charge substantially less than cost solely. It also only provided services to the group that formed it. This organization qualified for exemption from Federal income tax under section 501(c) (3) of the Code. In this case, the organization obtained contributions to cover all or part of the cost of the management services it provided and also used the contributions to provide supplemental income or capital to be used exclusively for the charitable, educational, or scientific purposes of the organizations it served. In addition, the fees paid by the member organizations represented less than fifteen percent of the total costs of operation.

Revenue Ruling 72-369, 1972-2 C.B. 245, found that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption, because providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case were provided at cost and solely for exempt organizations was not sufficient to characterize this activity as charitable within the meaning of section 501 (c)(3) of the Code. It was also found that furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Application of Law:

Section 501(c) (3) of the Code sets forth 2 main tests for qualification for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Your organization has not satisfied the operational test.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes. You will not be "operating exclusively for one or more exempt purposes as set forth in section 1.501(c)(3)-1(e)(1) of the regulations unless your organization's activities are conducted in furtherance of tax exempt purposes; you are providing consulting services for a fee to unrelated organizations that may or may not qualify for exemption under section 501(c)(3). These services you describe further no exempt purpose since consulting services conducted on a regular basis for a fee is a trade or business ordinarily carried out by a for profit business. You are also employing members of your board of directors resulting in private benefit. Accordingly, you do not meet the operational test of section 501(c) (3) of the Code.

Your organization is similar to that in Better Business Bureau of Washington, D.C., Inc. v. United States. You have indicated that your organization will be involved in some educational activities. Although some activities may in themselves be considered educational, the fact that

one of your substantial activities is providing consulting and technical services for a fee similar to a for-profit business destroys your claim for exemption.

You are also comparable to the organization in Living Faith Inc. v Commissioner, 60 T.C.M., 710, 713(1990), aff'd 950 F.2d 365 (& Cir. 1991). Your activities are carried on in a commercial manner which is evidenced by the fact that you do not use volunteers and you promote yourself in ways that are characteristic of a commercial business. Like this organization, you are in direct competition with others who provide consulting services for a fee.

You are also like the organization described in Easter House V. United States, 87-2 U.S.T.C. You contract like this organization with clients who agree to your fee structure. Other traits you share with this organization include the fact that you do not appear to be soliciting contributions and your staffing and salary structure are indicative of a for profit. In addition, your contract terms especially the provision that your clients are responsible for fees even if the client withdraws is a characteristic of a for profit. You also only provide services to those that agree to your contract terms. Finally like this organization, you are paying substantial compensation to your president.

Your organization is also similar to that in Revenue Ruling 72-369, 1972-2 C.B. 245. Like this organization, you are providing consulting and technical services to unrelated organizations for a fee; however, you do not require clients to be exempt under section 501(c)(3). Like this organization, you give advice on specific methods of operations to client organizations and your services are tailored to the individual needs of the client organization.

Your organization is not similar to that in Revenue Ruling 71-529. C.B. 1971-2, 234 which qualified for exemption under section 501(c)(3). You are not a membership organization comprised of tax exempt organizations, which formed it. In fact your services are available to any organization who wishes to apply for a federal grant. Another difference is that you are primarily funded by fees while fees make up less than 15% of this organization's financial support. In addition, your expenses are paid from fees while this organization's operating expenses are paid from grants.

Finally, you indicate you intend to pay substantial compensation to your board members and officers, one of whom is your incorporator and president. While an organization may pay reasonable compensation for services rendered to it, it appears that one of the purposes for your incorporation is to provide employment opportunities for particular individuals. Providing benefits to private persons who are not members of a charitable class is not a charitable activity and you are therefore not operated exclusively for charitable purposes.

Applicant's Position:

Your letter dated W explains your position with regard to tax exemption under section 501(c)(3) of the Code. You maintain that you are organized and operated exclusively for exempt purposes described in section 501(c)(3). As a result, you conclude that you qualify under section 501(c)(3) of the Code.

You state the following:

1. You offer consulting services and instruct, educate, capitate and train other faith based organizations, and community initiatives, free of charge.
2. You assist faith based organizations and community initiative organizations in the filing of 501(c)(3) forms free of charge. You also provide the 501(c)(3) fee to charitable organizations that demonstrate non payment capability. This is done without making public announcement and without requesting payment on a charitable basis so that they can obtain federal funds and continue providing charitable services in their communities.
3. You assist faith based organizations with community initiatives and with the filing of the form 1101 of the P.
4. You assist faith based organizations in obtaining all the necessary documents to prepare, write and submit proposals that will allow them to provide charitable services to their communities.
5. You attend meetings with local government agencies, faith based organizations and community initiatives, charities and others upon request of the organization. You provide initiative recommendations or planning advice upon request and pay your transportation, gas meals and personal expenses.
6. You conduct conferences in the different municipalities at the mayor's invitation or that of local faith based organizations to promote President Bush's initiative to eradicate homelessness within the next 10 years. You advocate partnerships with local and federal government programs as a contribution to abolish homelessness, elderly and youth abandonment, child abuse and neglect, and much other social malevolence. Conferences are provided at no cost to the participants and the hosts.
7. You provide translating services at no cost to your customers.

Furthermore, you state that you are a not for profit organization. You provide consulting services, educate and give to faith based organizations technical knowledge. You conduct charity work by assisting those organizations that work with very low income children, youth and elders at no cost to them and are referred to them by word of mouth or upon their request. The intent is to encourage the existing organizations in O and outside the island to provide assistance to those in need and endorse the federal government initiative in creating a strong and healthier society. Fees for writing their proposals are not charged and when a proposal request is made, only the actual cost of production is paid for.

Service Response to Applicant's Position:

Your response indicates that you believe that you meet the requirements of section 501(c) (3) because you are operating exclusively for 501(c)(3) purposes; your letter dated W outlines your position with regard to tax exemption under section 501(c)(3) of the Code. You maintain that you are organized and operated exclusively for exempt purposes described in section 501(c)(3). As a result, you conclude that you qualify under section 501(c)(3) of the Code.

You maintain that you offer your services free of charge; however your contract with clients indicates otherwise. This contract requires a substantial deposit and lists fixed service fees. The client is also responsible for any expenses incurred if the client decides to withdraw. The

Contract for Housing Consultant Services 92531-A-CH provided by HUD for consultants such as yourself demonstrates that you are funded by fees for specific services you render to your client.

You also did not provide any details on how you are operating substantially below cost as required by Revenue Ruling 72-369, 1972-2 C.B. 245.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990), the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), held that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

Since you have not provided information from which it can be concluded that you are operating exclusively for charitable and educational purposes within the meaning of section 501(c)(3), you do not meet the operational test of section 501(c)(3) of the Code.

Conclusion:

Based on the facts it appears that you are operating in a manner similar to a commercial enterprise since your primary activity is providing consulting services for a fee. Your organization is in competition with other firms providing consulting services. Although you purport that you are operating for exempt purposes. These purposes are incidental to your business purpose. Accordingly, you do not qualify 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, Exempt Organization Appeal Procedures for Unagreed Issues.

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

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,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements