



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
May 29, 2014

Number: **201434023**
Release Date: 8/22/2014

Uniform Issue List Numbers:
501.00-00; 501.03-00

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

Dear _____ :

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

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

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

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,

Tamera Ripperda
Director, Exempt Organizations

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
February 18, 2014

Uniform Issue List Numbers:
501.00-00
501.03-00

Contact Person:
Identification Number:
Contact Number:
FAX Number:
Employer Identification Number:

LEGEND

State =
Commission =
Road =
Project =

Dear :

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

Facts

You were formed as a nonprofit corporation in State. Your Articles of Incorporation state that you are to be organized and operated exclusively for charitable purposes, and that your specific purpose is "to empower communities with sustainable technologies that enhance the quality of life and equality of information access." Your mission "is to create metropolitan area networks (MAN) in urban communities in order to help revitalize technologically underserved business districts." Your Bylaws state that your purposes are:

- To support and conduct technological research, education, and informational activities to increase public awareness of emerging technologies;
- To combat the digital divide in un-served and under-served business communities; and
- Empower businesses to help prevent business deterioration in minority communities through technology.

You have established a free public Wi-Fi network covering the business districts along Road. You stated that "in addition to free public internet access, a private Wi-Fi network for business participants, connected at a higher-capacity; with enhanced security and increased speed is

available to business owners. Moreover, a secure website business portal provides business users with many emerging technology software applications.”

Your primary activity appears to be Project, which your advertising materials describe as “a wireless network project developed to help increase business visibility along the Road corridor. The goal of Project is to promote a community friendly hotspot environment in an effort to bring business back to Road. By providing free Wi-Fi connectivity to patrons, customers and residents, businesses will see increased traffic, resulting in increased sales.” You will charge \$250 to businesses wishing to participate in Project, plus \$250 for each additional outdoor Wi-Fi unit and \$150 for each additional indoor Wi-Fi unit. Participating businesses will be designated “Project Partners,” and will receive additional benefits including web and radio advertising.

You also provide a collection of websites, which emphasize business, public safety and emergency preparedness, faith, community, a social networking site and internet radio. You stated that your goals are to “interconnect and collaborate with local businesses to create a network peering node and establish a true regional network,” “encourage access to community anchor institutions,” and “spur affordable broadband access for local business.”

Your promotional materials, aimed at local businesses, state, “Many businesses are offering free Wi-Fi to their customers. Not just because it’s nice to have, but to attract more business. If you don’t offer Wi-Fi, your customers will go where it is offered. That’s why, for your economic development, [your Wi-Fi service] is a must-have.” Your promotional materials also state that “by providing free Wi-Fi connectivity to patrons, customers and residents, businesses will see increased traffic, resulting in increased sales.”

You will provide advertising services to local businesses through your website. Although you stated that your programs and services are “geared toward technologically unserved and underserved communities,” you did not provide evidence that the communities you serve are technologically unserved or underserved.

You received a grant from Commission, a part of the State government, to provide Wi-Fi access via your “business-sponsored model.” You will use a large portion of the grant to purchase Wi-Fi equipment.

You have engaged in some community activities, such as sponsoring seminars demonstrating online emerging technologies, coordinating local technology events, and promoting computer awareness. However, many of these activities appear to have occurred prior to your date of legal formation.

You have a three-member Board of Directors. Two of your Board members are blood relatives. Your Bylaws state that you will have a “Board of Advisors of not fewer than 13 members.” However, there is no evidence that you have a Board of Advisors.

Law

Section 501(c)(3) provides exemption from federal income tax for organizations organized and operated exclusively for charitable, educational or other exempt purposes.

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 § 501(c)(3), an organization must be both organized and operated exclusively for one or more purposes specified in such 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) 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 § 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.

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

Section 1.501(c)(3)-1(d)(2) states in part, that the term "charitable" in § 501(c)(3) includes lessening the burdens of government, relief of the poor and distressed or of the underprivileged, and promotion of social welfare by organizations designed to eliminate prejudice and discrimination or to combat community deterioration and juvenile delinquency.

Rev. Rul. 65-299, 1965-2 C.B. 165, granted exemption under § 501(c)(4) to an organization whose purpose was to assist families and individuals with financial problems and help reduce the incidence of personal bankruptcy. Its primary activity was meeting with these persons to analyze their specific financial problems and counsel on payment of their debts. The organization advised applicants on debt payment, negotiated with creditors, and set up debt repayment plans. It did not restrict its services to the needy. The organization did not charge fees for counseling services; it made "a nominal charge" for monthly pro-rating services to cover postage and supplies. For financial support, it relied upon voluntary contributions from local businesses, lending agencies, and labor unions. The Service maintained that the objective and activities of the agency contribute to the betterment of the community as a whole.

Rev. Rul. 68-655, 1968-2 C.B. 213, held that by educating the public about integrated housing and conducting intensive neighborhood educational programs to prevent panic selling because of the introduction of a non-white resident into a formerly all-white neighborhood, the organization is striving to eliminate prejudice and discrimination and to lessen neighborhood tensions. By making mortgage loans to families that cannot obtain such loans commercially but that otherwise are considered desirable residents, the organization is trying to break down the barriers of prejudice and gain acceptance of integrated housing within the community. It accomplishes this same objective by purchasing homes and reselling or leasing them on an open occupancy basis to families that will be compatible to a neighborhood and demonstrate the feasibility of integrated communities. By stabilizing the neighborhood, the organization is combating potential community deterioration. Accordingly, the organization is exempt from federal income tax under § 501(c)(3).

Rev. Rul. 69-441, 1969-2 C.B. 115, granted § 501(c)(3) status to an organization with two functions: 1) educating the public about personal money management through films, speakers, and publications, and 2) providing individual counseling to "low-income individuals and families."

As part of its counseling, it established budget plans, i.e., debt management plans, for some clients. The organization provided the debt management services without charge. It was supported by contributions primarily from creditors. By virtue of aiding low-income people without charge and providing education to the public, the organization qualified for § 501(c)(3) status. Moreover, by educating the public on budgeting information, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 70-585, 1970-2 C.B. 115, provides four situations where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and, in certain circumstances, moderate income families. Situation 1 - By providing homes for low income families who otherwise could not afford them, the organization is relieving the poor and distressed. Thus, it is held that this organization is organized and operated exclusively for charitable purposes, and it is exempt from Federal income tax under § 501(c)(3). Situation 2 - the organization's activities are designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, it is engaged in charitable activities within the meaning of § 501(c)(3). Situation 3 - the organization's purposes and activities combat community deterioration by assisting in the rehabilitation of an old and run-down residential area, they are charitable within the meaning of § 501(c)(3). Situation 4 - The organization plans to erect housing that is to be rented at cost to moderate income families. The organization is financed by mortgage money obtained under federal and state programs and by contributions from the general public. Since the organization's program is not designed to provide relief to the poor or to carry out any other charitable purpose within the meaning of the regulations applicable to § 501(c)(3), it is not eligible for exemption.

Rev. Rul. 74-587, 1974-2 C.B. 162, (1974), provides that a nonprofit organization formed to relieve poverty and fight community deterioration through a program of financial assistance in the form of low cost or long term loans to various businesses in economically depressed areas is exempt under § 501(c)(3). Although some of the individuals receiving financial assistance in their business endeavors may not themselves qualify for charitable assistance, that fact does not detract from the charitable nature of the program. The recipients of the loans are merely the instruments by which the charitable purposes are sought to be accomplished.

Rev. Rul. 76-419, 1976-2 C.B. 146, held that a nonprofit organization that purchased blighted land in an economically depressed community, converted the land into an industrial park, and induced industrial enterprises to locate new facilities in the park through favorable lease terms that required employment and training opportunities for unemployed and underemployed residents in the area, is operated exclusively for charitable purposes.

Rev. Rul. 77-111, 1977-1 C.B. 144, held that an organization formed to increase business patronage in a deteriorated area by providing information about the shopping opportunities is not operated for charitable purposes and is not exempt under § 501(c)(3). Increasing business patronage and reviving lagging sales are not charitable purposes.

Rev. Rul. 81-276, 1981-2 C.B. 128, describes a professional standards review organization established pursuant to a federal statute to review health care practitioners' and institutions' provision of health care services and items for which payment is made under Medicare and Medicaid, and determine whether the quality of services met professionally recognized

standards of care. The IRS ruled that by taking on the government's burden of reviewing the quality of services provided under Medicare and Medicaid, the organization lessened the burdens of government within the meaning of § 1.501(c)(3)-1(d)(2). Any benefit to members of the medical profession from such activities was incidental to the benefit the organization provided in lessening the burdens of government. Therefore, the organization qualified for exemption under § 501(c)(3).

Rev. Rul. 85-1, 1985-1 C.B. 177, applied the criteria set out in Rev. Rul. 85-2, *infra*, for determining whether an organization's activities are lessening the burdens of government. In this ruling, the organization was created to assist a county's law enforcement agencies in policing illegal narcotics traffic more effectively. The organization provides funds that allowed the county's agents to engage in certain activities for which funds were not otherwise available. This ruling concluded that, by funding activities the county treats as an integral part of its program to prevent the trafficking of illegal narcotics, the county demonstrates that these activities are a part of its burden. Thus, the organization is lessening the burdens of the county by enabling it to augment its law enforcement activities.

Rev. Rul. 85-2, 1985-1 C.B. 178, states that, to determine whether an activity is a burden of government, the question is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden. To determine whether the organization is actually lessening the burdens of government, all the relevant facts and circumstances must be considered. A favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of the government.

In *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), the Tax Court determined that the American Campaign Academy, a training program for political campaign professionals, operated for the private benefit of a political party because its curriculum was tailored to that party's interests. The Tax Court defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests." Private benefits included "advantage; profit; fruit; privilege; gain; [or] interest." However, "[o]ccasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefit."

Analysis

Based on the information and supporting documentation you provided in your application, we conclude that your activities do not further charitable purposes, and that you operate for a substantial nonexempt private purpose. An organization cannot be recognized as exempt under § 501(c)(3) unless it shows that it is both organized and operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(a)(1). To be regarded as "operated exclusively" for exempt purposes, you must engage primarily in activities that accomplish such exempt purposes. Section 1.501(c)(3)-1(c)(1). Although you may have some stated purposes that are

exempt (such as conducting research and education), few, if any, of your activities actually further these exempt purposes. Moreover, your primary activity, namely the operation of Project, does not further any exempt purposes.

Organizations that are created to help revitalize a depressed economic area by assisting business operations in the depressed area have been recognized exempt under § 501(c)(3) on the theory that their activities relieve the poor, distressed, or underprivileged or that they promote social welfare by eliminating prejudice and discrimination and combating community deterioration. See § 1.501(c)(3)-1(d)(2). However, to be exempt, an organization must do more than simply encourage business development while incidentally furthering social welfare purposes. If it is to accomplish purposes that are considered charitable under § 501(c)(3), an organization that seeks to encourage business development must limit its activities to certain areas and individuals. Below, we explain our finding that you do not further any charitable purposes.

Relief of the Poor and Distressed or of the Underprivileged

Rev. Rul. 69-441 describes an organization that is relieving the poor and distressed or the underprivileged within the meaning of § 1.501(c)(3)-1(d)(2). The organization provides free money management services to low-income individuals. The ruling contrasts that organization with the organization described in Rev. Rul. 65-299, which is exempt under § 501(c)(4) rather than § 501(c)(3), because it does not limit its services to low-income individuals and is not engaged in any educational activities. Like the organization in Rev. Rul. 65-299, you do not limit your services to low-income individuals. Similarly, your educational activities appear to be sporadic and insubstantial, and much of the educational activity you claim to have engaged in took place prior to your legal formation. Therefore, unlike the organization described in Rev. Rul. 69-441, you are not relieving the poor and distressed or underprivileged.

Combating Community Deterioration and Juvenile Delinquency

Combating community deterioration is an exempt purpose within the meaning of § 501(c)(3). See § 1.501(c)(3)-1(d)(2). Organizations combating community deterioration in a charitable manner provide economic development activities in which the good received by the general public outweighs the private benefit afforded to the beneficiaries. Organizations that combat community deterioration typically convert deteriorated properties or blighted land into economically useful structures for individuals in need. See, e.g., Rev. Rul. 70-585 Situation 3; Rev. Rul. 76-419. Unlike those organizations, you have neither suggested that the communities in which you operate are deteriorating nor provided evidence that your activities reduce deterioration.

In addition, you do not provide economic development in a manner that would qualify you for exemption under § 501(c)(3). Unlike the organization described in Rev. Rul. 74-587, you have not demonstrated that the area you serve suffers from a lack of capital for development, owners with limited entrepreneurial skills, social unrest and instability, or a depressed economic market. Unlike the organizations described in that ruling and in Rev. Rul. 76-419, you make no attempt to ensure that the businesses that receive your assistance and services will fill a community need and offer a community benefit. That is, you do not purposefully select businesses that have the potential to (for instance) create new area jobs, utilize unused or underused facilities,

or that infuse cash into the community from the local purchase of goods and services. Moreover, you have not demonstrated that providing free wireless internet service to these businesses would actually alleviate any of these issues.

Like the organization described in Rev. Rul. 77-111, you do not limit your offer to provide Wi-Fi connectivity and related advertising services *solely* to businesses that would otherwise be unable to acquire Wi-Fi connectivity because of their location in a depressed area or their affiliation with a disadvantaged group, but instead, you offer services to any business willing to host a wireless router.

Elimination of Prejudice and Discrimination

Rev. Rul. 68-655 and Rev. Rul. 70-585, Situation 2 describe organizations that endeavor to eliminate prejudice and discrimination. In Rev. Rul. 68-655, the organization makes loans to minority homeowners to purchase homes in formerly all-white neighborhoods. Rev. Rul. 70-585, Situation 2 describes an organization that educates the public about integrated housing and construct new housing that is designed to reduce racial and ethnic imbalances within a community.

Although your activities may yield a financial benefit to minority-owned businesses, you do not serve such businesses exclusively. In other words, unlike the organizations described in Rev. Rul. 68-655 and Situation 2 of Rev. Rul. 70-585, your services are available to all businesses in a given geographic area regardless of whether the businesses are minority-owned. We have never ruled that merely providing a product to local businesses (many of which may be minority-owned) helps to eliminate prejudice and discrimination, and you have not indicated how the sale of your Wi-Fi equipment helps to achieve such aims.

Government Involvement

The term "charitable" includes lessening the burdens of government. Section 1.501(c)(3)-1(d)(2). In Rev. Rul. 85-1, *supra*, and Rev. Rul. 85-2, *supra*, an organization's activities lessen the burdens of government within the meaning of § 1.501(c)(3)-1(d)(2) of the regulations if the government considers the activities to be its burden and the activities actually lessen the government's burden. An activity is a government burden if there is an objective manifestation by a government unit that it considers the organization's activities to be its burden. Such consideration may be evidenced by the interrelationship between the government unit and the organization. An organization's performance of activities that a government unit treats as an integral part of its programs is evidence that the organization is lessening the burdens of government. *See also* Rev. Rul. 81-276, *supra* (organization took on the government's burden of reviewing the quality of services provided under Medicare and Medicaid and thus lessened the government's burden of performing this task).

You do not lessen the burdens of government under § 1.501(c)(3)-1(d)(2). Although you received a grant from Commission, there is no evidence of an objective manifestation by State that it considers the activities you perform to be its burden. Moreover, there is no evidence of a close working relationship between you and State or any other government: State has no voting power on your Board or other means of exerting substantial influence over you, and no obligation to fund you beyond your initial grant.

Substantial Private Benefit

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization does not operate exclusively for exempt purposes if it operates for the benefit of private interests. Your primary purpose is to benefit private interests; namely, the businesses to whom you sell Wi-Fi service. Therefore, you serve substantial private interests in violation of § 501(c)(3). An organization is not organized or operated exclusively for one or more exempt purpose unless it serves a public rather than private interest. Section 1.501(c)(3)-1(d)(1)(ii). Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. It is impermissible for an organization's activities to excessively benefit the private interests of disinterested persons as well. *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1069 (1989). "Prohibited private benefits may include an 'advantage; profit; fruit; privilege; gain; [or] interest.'" *Id.* at 1065-66 (1989) (citing *Retired Teachers Legal Fund v. Commissioner*, 78 T.C. 280, 286 (1982)). Applicant must show that no more than an insubstantial part of its activities benefit private interests or any other nonexempt purpose. *Id.* at 1066.

By providing a service designed to attract additional customers to area businesses, you are providing such businesses with a substantial private benefit. You did not provide evidence that the businesses you serve are members of a charitable class. Thus, as the primary beneficiaries of your activities, these businesses are receiving a private benefit that precludes you from qualifying for exemption under § 501(c)(3). As Rev. Rul. 77-111 makes clear, increasing business patronage and reviving lagging sales are not charitable purposes; yet your promotional materials and other information you submitted about your activities make clear that your primary aims are to improve sales and profits for local businesses. For example, you tout "increased traffic, resulting in increased sales," and "increase[d] business visibility." In addition, a substantial part of your activities appears to consist of providing advertising services for local businesses. Not only does the provision of advertising fail to further exempt purposes, it also may yield impermissible private benefit to such businesses.

Conclusion

Because your activities do not further charitable purposes, but, instead, serve private interests, we conclude that you are not operated exclusively for charitable purposes within the meaning of § 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. 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 this address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth Corbin
Acting Director
Exempt Organizations