



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201438030**
Release Date: 9/19/2014

Date: 6/26/14

UIL: 501.03-00; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Required To Be Filed:

Tax Years:

Dear :

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

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

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

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

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

Sincerely,

Tamera Ripperda
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: 4/25/14

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B= Date
C= Name
E= Quantity
F= Name
G= Name
H= Name
J dollars = Dollar Amount
K dollars = Dollar Amount
L= Name
M= Website
N= Quantity
P Dollars= Dollar amount
T= Website
U= Name

UIL:

501.03-00
501.33-00

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

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

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

Facts

You were formed as an unincorporated association on date B in state C. Your Constitution and Bylaws indicated you are organized exclusively for charitable purposes to promote F scholarship program at the local level and fund college scholarships for young women between the age range of E who compete in the your beauty pageant for the title of L. The winner of your beauty pageant which is held once a year moves on to compete at the state level with the potential to the national level.

You are affiliated with H, which is recognized under section 501(c)(4) of the Code whose primary activity is operating a beauty pageant. You are operating under the rules of H and submitted the H Quick Reference Guide . The guide serves as an overview of H's policies to maintain national standards and help organizations run successful competitions. The reference guide also "encourages organizations to review individual license agreements contestant contract etc. for complete details." None of these were provided.

To compete in your beauty pageant for the title of L, your contestants must be a resident of the state of C or attending a college or university in the state of C at the time of the competition. You wrote the other eligibility criteria you use are found in the H Quick Reference Guide which states that contestants:

1. Must be a high school graduate or successfully completed the GED testing program for high school equivalency for entry into college or a university degree program by the end of July before preceding the National Finals;
2. Must be a citizen of the United States at the time she enters her first pageant;
3. Never been married or pregnant;
4. Must not be an adoptive parent of a child;
5. Must be in good health and able to participate fully and without limitation in all program activities;
6. Must be of good moral character and not been in any act of moral turpitude;
7. See Contract for additional requirements.

The H Quick Reference Guide also states, "Each Year, H reviews the contestant contracts for the state and local contestants and makes them available at least 30 days prior to the state pageant". However, no contracts were submitted but it was indicated in the H Quick Reference Guide that copies of the contracts are posted on T, one of the websites affiliated with H. It was also indicated that this site also contains many tools for local contests to build programs; it's password protected to administrators of local and state beauty pageants. Moreover, the H Quick Reference Guide also provides for the winner's responsibilities under the heading ""State/Local titleholder Job Description".

You also submitted the judge's manual provided to you by H with criteria for judging

local contestants; for example the criteria for the private interview competition is designed to allow insights into the contestant's ability to fulfill the responsibility outlined in the State/Local titleholder Job Description. The information also states it gives the judge an "Opportunity to learn about contestant's qualities and attributes to fulfill the titleholder positions."

In the application to participate in your beauty pageant, applicants must supply biographical data and answer questions. One such question asks: "H encourages the young women who participate in the program to become involved in their communities to speak out on issues of concern to them, their community and the nation. If selected what issue would you focus on during your year of service?" It further states "H requires participants to raise a minimum of J dollars in donations for G (A charity affiliated with H) for each local program entered or K dollars for the ability to enter four or more. I understand if the required funds are not raised and registered on the website, M, the day before the program, I will not be able to compete". You later wrote you will help contestants raise the necessary funds and no one will be turned away.

The application also provides "If I win, I understand that I am required to attend the following Mandatory Miss C Events: Workshop Weekend, Community Service Day, and Miss C Week."

There are usually about N contestants in your beauty pageant who compete for the title of L in the areas of lifestyle and fitness, take out, evening gown, talent and interview. Every contestant who enters the pageant receives a nominal scholarship of at least J dollars while the winner and 2 runner up's receive up to P dollars. The winner may also receive mileage as she will have scheduled events to participate in. For example, she must participate in a specific number of events each year, and must perform other actions in accordance with the requirements of H. Each participant is informed of her scholarship amount upon being awarded a scholarship at the end of the production program and is given a 1-year period from the date to complete the scholarship award and claim form. Upon completion of the application, payment is made to the indicated educational institution.

To attract contestants, you contact high schools and colleges and make public service announcements on the radio and in newspapers. Moreover, you have a website and a Facebook page.

You submitted literature stating that you are the Miss C preliminary contest and an advertisement stating "You are invited to compete for the title of Miss C with an opportunity to move onto world's leading provider of scholarships "H".

You are financed by donations, fundraisers and program advertising. Expenses include a franchise fee to the C state pageant, scholarships, mileage paid to the winner, facility

rental and other operating expenses.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for educational or charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under 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 such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

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

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations states 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) of the Code. 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) of the Regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

In Binger v. Johnson, 394 U.S. 741 (1969), the Supreme Court stated that to be excluded from gross income under section 117, scholarships must be "relatively disinterested, no strings educational grants, with no requirements of any substantial quid pro quo from the recipients."

In Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its 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 Miss Georgia Scholarship Fund, Inc. v. Commissioner, 72 TC 267 (1979), the Tax Court held that a separate fund created by the Miss Georgia Pageant solely to award scholarships to the pageant's contestants, did not qualify under section 501(c)(3) of the Code because the scholarships were awarded in consideration of contractual obligations. The contract required contestants to participate in the Miss Georgia Pageant and appear in public as directed by pageant officials. A winning contestant who failed to honor the contract forfeited all rights to her "scholarship." The Tax Court concluded that the "scholarships" were compensation for signing the pageant contract and for performing services under it. Therefore, these awards were not section 117 scholarships and the fund was not operated exclusively for section 501(c)(3) purposes.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), aff'd without opinion, 647 F.2d 170 (9th Cir. 1981), the Tax Court concluded that an organization created to disseminate educational programs, the rights to which were owned by for-profit corporations, furthered the commercial, private purposes of the for-profit entities and did not qualify for exemption under IRC 501(c)(3). The organization used the franchiser's methods, employees, and materials, and paid royalties for the right to use the franchiser's programs.

Application of Law

You are not as described in section 501(c)(3) of the Code because you are not exclusively organized and operated for charitable or educational purposes.

You do not meet the organizational test per Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations because your constitution does not limit your purposes to one or more exempt purposes as required by Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your organizing document provides that your specific purpose is to: "Promote F scholarship program at the local level and fund college scholarships for young women between the ages of E who compete in your beauty pageant." Because you are organized to fund F's scholarship program, which is not exempt under section 501(c)(3), you are not organized exclusively for purposes described in the regulations .

You have also not established you meet the operational test as per Section 1.501(c)(3)-1(a)(1) of the regulation because you are operating for substantial non-exempt purposes in contravention to Section 1.501(c)(3)-1(c)(1) of the regulations. The information you provided shows:

- You are operating for the private benefit of H as shown by the fact you use H's materials, policies and eligibility requirements, and judging standards; in addition, you are providing H with qualified candidates to the pageants it operates.
- You are operating for the private benefit of the contestants because all contestants receive at least a "nominal scholarship" for participating in your

beauty pageant; this illustrates these awards are not scholarships within the meaning of the regulations.

- You are operating for the private benefit of the winner of your beauty pageant because she receives a larger “scholarship” and mileage compensation but is under contractual obligations to you and H.
- You substantially engaged in putting on a beauty pageant; this also serves a substantial non-exempt purpose as a recreational outlet for participants and community members.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The information submitted shows you are set up to serve the private interests of H; this is demonstrated by information in H’s Quick Reference Guide which you must rely on to operate your beauty pageant. Moreover, you are providing H qualified candidates to compete in H’s pageants. You are also serving the private interests of the contestants by providing them at least a nominal scholarship as incentive to participate in your pageant. Finally, you are serving the private interests of the winner, by compensating her by means of a “scholarship” for future services.

Your scholarship program has characteristics like that described in Binger v. Johnson, 394 U.S. 741 (1969). Your scholarship program serves as compensation to the winner because she must render services to you as indicated by the fact she is under contract to you. Like the organization in the court case, there are strings attached which disqualifies your program from exemption.

Your scholarship program is also similar to that found in Miss Georgia Scholarship Fund, Inc. v. Commissioner because your “scholarships” serve as compensation. For example, as an eligibility requirement to compete in your pageant, all candidates must agree to the terms of the contract before participating in your beauty pageant. The winner’s responsibilities are also outlined in the “State/Local titleholder Job Description” provided by H. In addition, the nominal scholarships guaranteed to all participants serve as compensation to encourage women to raise the required funds for charity and then be able to participate in your beauty pageant. Therefore, these awards are not section 117 scholarships and you are not operating exclusively for section 501(c)(3) purposes.

You are similar to the organization in est of Hawaii v. Commissioner because you are primarily dependant on H for your operations. You are using H’s Quick Reference Guide to operate your beauty pageant as well as H’s judging criteria to provide H with qualified candidates for the state pageant and potentially the national pageant; you are unable to remove yourself from H and have no function without H. This heavy reliance on H indicates that you would be unable to operate without H. Therefore, you are

operating primarily for the private benefit of H which precludes exemption under section 501(c)(3).

Applicant's Position

You wrote that you are a volunteer organization that raises money for scholarships. In that same reply you said that Miss "State" and Miss "Local" programs including Miss C and another Miss U organizations had applied and were granted 501(c)(3) in the past years whose activities are like yours. You also stated that you need to be uniform through the scholarship program process. The money raised is given as scholarships directly to the universities or college in which the contestants are enrolled and you do not give away "cash" to any contestant. You also do not have the contestants represent the "sponsor's" service goals. Each person in the program does have a "platform" which brings awareness of programs and involvement of "helping other people", however the basis of your program is scholarships that are given to the schools where each person is enrolled. You believe that scholarships are the most important contribution to the young women who compete in the program.

Service Response to Applicant's Position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3) as described in the preceding facts and analysis. You are operating for the private benefit of H, and the participants in your beauty pageant. Finally, you provided the names of organizations exempt under Section 501(c)(3) whose operations you believe are like yours. However, similar to the organization in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to provide enough information to prove to us that you are exclusively educational within the meaning of 501(c)(3) and that you meet the requirements of section 501(c)(3).

Conclusion

Based on the facts and information provided, you are not organized and operating exclusively for exempt purposes as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. You are operating for the benefit of H and, the winner of your beauty pageant as well as for the participants in your beauty pageant. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a protest statement explaining your views and reasoning. You

must submit the protest 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 protest 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.

Types of information that should be included in your protest statement can be found in Publication 892. The protest statement must be accompanied by the following declaration:

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

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 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,

Tamera Ripperda
Director, Exempt Organizations

Enclosure: Publication 892