

**Internal Revenue Service**  
Appeals Office

Date: DEC 11 2014

ORG  
ADDRESS

**Department of the Treasury**

Employer Identification Number:

Person to Contact:

Tax Period(s) Ended:

Number: 201510059  
Release Date: 3/6/2015

UIL: 501.03-08, 501.03-30,  
501.33-00  
504.50-00

**Certified Mail**

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code.

Our adverse determination was made for the following reasons:

You have failed to demonstrate that you are operated exclusively for exempt purposes, and that no part of your net earnings inures to the benefit of private shareholders and individuals, as required by section 501(c)(3) of the Code. Your primary activities are the researching, manufacturing, and retailing of pharmaceutical products, which more than insubstantially furthers non-exempt commercial purposes. In addition, your activities result in impermissible private benefit.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1041 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit [www.irs.gov](http://www.irs.gov).

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write

to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit [www.irs.gov/advocate](http://www.irs.gov/advocate) for more information.

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

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892

# How to Appeal an IRS Decision on Tax-Exempt Status



**Tax Exempt  
Government Entities**

## Introduction

U.S. tax law grants the Internal Revenue Service the authority to determine which organizations meet the criteria for tax-exempt status and which do not. This power applies to new applicants as well as existing groups that – in the view of the IRS – are no longer complying with the law.

The tax laws also provide the right of appeal for organizations that disagree with a proposed determination by the IRS.

You may appeal when:

- you do not agree with a decision made by the IRS about your organization's initial qualification for tax-exempt status
- as a result of an audit, the IRS proposes to revoke or modify your organization's tax exempt status

Certain appeals rules apply. See Special Considerations below.

Appeals are considered by the Appeals Office, an independent function within the IRS. The appeals process offers an opportunity to resolve disputes before they lead to litigation.

This publication helps explain the steps involved and how the system works.

## Filing a Protest

If you disagree with a proposed determination an agent made about your organization's qualification for tax-exempt status, you may file an immediate appeal or request a meeting or telephone call with the supervisor of the person who issued the findings. If, after you meet with the supervisor, you agree with the determination regarding your tax-exempt status, you will be asked to sign a consent form. By signing, you do not waive your right to protest the determination and ask for Appeals Office consideration later on.

If, however, you still disagree, the IRS encourages you to file an appeal. This is your statement about why you disagree and it becomes the first step in the appeals process. Your protest statement must be filed within 30 days of the date of the formal written proposal letter from the IRS (often called the "30-day letter") and should include:

- Your organization's name, address, Employer Identification Number (EIN) and a daytime phone number
- A statement that the organization wants to protest the proposed determination
- A copy of the 30-day letter showing the findings that you disagree with (or the date and IRS office symbols from the letter)
- An explanation of your reasons for disagreeing, including any supporting documents
- The law or authority, if any, on which you are relying

Include the following declaration with your protest statement:

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

The protest statement may be signed by an officer of your organization or your representative. Submit your protest and any supporting documents to the address shown on the letter.

Note: If you do not file a protest, you will not be able to seek a declaratory judgment in court at a later date. The court requires that you first exhaust administrative remedies at the IRS. Generally, if you do not file, you will not have exhausted those remedies.

## Representation

A principal officer or trustee may act on behalf of your organization at any level of appeal. Or you may authorize an attorney, certified public accountant or individual enrolled to practice before the IRS to represent you. In that case, you need to file Form 2848, Power of Attorney and Declaration of Representative. The IRS will then authorize your representative to file written responses and execute consents, agreements and – in certain circumstances – returns on your behalf and communicate directly with him or her about your case. For more information, see Publication 947, Practice Before the IRS and Power of Attorney (<http://core.publish.no.irs.gov/pubs/htm2006/p947toc.html>)

If the protest is signed by your representative, a so-called substitute declaration also must be included stating that the representative prepared the protest and any accompanying documents, and personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true and correct.

## If We Propose Changes to Your Tax-Exempt Status

Let's say your organization already has been granted tax-exempt status. If, after examining your annual information return or considering information from other sources, we determine that you no longer qualify, we may propose revocation or modification of your status.

For example, if you are classified as a publicly supported organization under sections 509(a)(1) and 170(b)(1)(A)(vi), but the level of public support reported on your return does not meet the required public support tests, we might propose that your exempt status be revoked or that your group be reclassified as a private foundation.

You will be notified of the proposed revocation or modification by letter or a Revenue Agent's Report. At that point you may file an appeal or request a conference with the manager of the IRS employee who made the proposal. As noted earlier, if after meeting with the manager you decide to agree with the revocation or modification, you will be asked to sign a consent form. If you still disagree after the conference, you may exercise your appeal rights by filing the protest. You have 30 days from the date of the IRS's proposal letter to file.

### Special Considerations

Limits on appeals rights apply in some cases. The right to an appeal or an appeals conference does not apply in cases where a delay in the proceedings would harm the interests of the IRS. Such cases might include fraud, jeopardy, the statute of limitations or where other immediate action is necessary to protect the interests of the government.

### After You File Your Protest

The Appeals Office is the dispute resolution forum of the IRS. It is separate from – and independent of – Exempt Organizations and other IRS divisions. Most disputes can be settled through the Appeals Office. But if you cannot reach an agreement with the Appeals Office, you may still be able to take your case to federal court.

Review of your case by the Appeals Office is neither automatic nor mandatory. If you believe that your disputed issue has not been addressed in published precedent or has been treated inconsistently by the IRS, you may ask that it be referred to the EO Technical office for advice or guidance. EO Technical will consider the issue and render a written decision in the form of a technical advice memorandum. You can request EO Technical consideration at any time, whether your case is in Examinations or in Appeals.

But note: A decision rendered in a technical advice memorandum that concerns your tax-exempt status or foundation classification is final and will not be reconsidered by Appeals. If the decision concerns any other issue, it is binding on Appeals only if it is favorable

to you. If the decision is unfavorable, Appeals can reach its own conclusion.

Appeals Office conferences may be in person, by telephone or by correspondence. In-person meetings are informal so that you, your representative and the Appeals officer can engage in a frank discussion of the issues in dispute. There is no sworn testimony, and no stenographer is present to record the discussions. Matters alleged as fact must be submitted in the form of an affidavit or declared to be true under penalty of perjury.

If the Appeals officer considers the issues amenable to settlement, you will be asked to submit an offer of settlement or the Appeals officer will propose the terms of a settlement. If you agree to settle, you will be asked to sign a settlement agreement form.

### Taking Your Dispute to Court

If a settlement cannot be reached in a dispute about the revocation or determination of tax-exempt status or modification of foundation classification, we will send you a letter stating our final determination and telling you the deadline for filing a pleading in court.

### Declaratory judgments relating to status and classification of organizations under Section 501(c)(3)

Once you receive the letter, you have the right to petition the U.S. Tax Court, the U.S. Court of Federal Claims or the U.S. District Court for the District of Columbia for a declaratory judgment as to your qualification for section 501(c)(3) status, your classification as a private foundation or a dispute about taxes owed. If the court rules in your favor, the IRS must abide by the court's decision. If the court does not rule in your favor, it will return the case to the IRS to determine whether additional taxes are owed.

(For more about taxes owed or refunds, please see IRS Publication 5, Your Appeals Rights and How to Prepare a Protest If You Don't Agree.)

The court cannot issue you a declaratory judgment unless you file an appropriate petition or complaint with

the court within 90 days of the date of our final determination letter. The court also must find that you have exhausted all administrative remedies available to you within the IRS. The IRS will not consider you to have exhausted your administrative remedies if you fail to protest a proposed determination or modification.

### United States Tax Court

To initiate a declaratory judgment action in U.S. Tax Court, file a petition titled "Petition for Declaratory Judgment (Exempt Organization)" with the court clerk at the address: United States Tax Court, 400 Second Street, N.W., Washington, DC 20217. The petition should contain:

- The petitioner's name and principal place of business or principal office or agency
- A statement that the petitioner is an exempt organization, private foundation or private operating foundation, the qualification or classification of which is at issue
- A statement that the petitioner has exhausted its administrative remedies within the IRS
- The date of the notice of the IRS's determination
- A copy of the IRS notice of determination
- A clear and concise statement of each reason why the determination is erroneous
- A statement of facts upon which petitioner relies to support each such reason
- An appropriate request for relief
- The signature, mailing address and telephone number of the petitioner or its counsel, and counsel's Tax Court bar number.

For more information about bringing an action in the U.S. Tax Court, visit the court's Website at [www.ustaxcourt.gov](http://www.ustaxcourt.gov) or contact the Office of the Clerk by mail at 400 Second Street NW, Washington, DC 20217-0002, or by phone at (202) 521-0700.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: November 30, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = date  
C = state  
D = country  
E = company  
F = organization  
G = company  
O = drug name  
P = drug name  
S = date  
X = individual  
Y = individual  
Z = individual  
d = dollar amount  
e = dollar amount  
g = dollar amount  
k = dollar amount  
m = dollar amount  
n = dollar amount

UIL#s

501.03-08  
501.03-30  
501.33-00  
504.36-01  
504.50-00

Dear :

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

**Issues**

Does your activity of researching, manufacturing, and retailing pharmaceutical products constitute a commercial business and therefore cause you to fail the operational test? Yes, for the reasons explained below.

Do you engage in substantial non-exempt activities by researching, manufacturing, and retailing pharmaceutical products causing you to fail the operational test? Yes, for the reasons explained below.

Have you shown that your structure and manner of operations will not result in inurement and/or private benefit to private individuals? No, for the reasons explained below.

### **Facts**

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation state you are organized exclusively for one or more of the purposes as specified in section 501(c)(3) of the Internal Revenue Code. Your Articles also state you are organized to provide affordable pharmaceuticals to the poor and to manufacture early cancer detection test, natural immunity boosters and rural health advocacy.

You are a successor of a for-profit company, G, owned by X, your founder and president. X had been conducting an herbal supplement and cancer testing business in D, and in the United States, under G, and another for-profit company, E, since 1998. After your formation, X began to transfer to you G and E's assets. The merger was complete on S. Your operation and organizational structures remain similar to G and E, however, you are now a non-profit entity with a for-profit subsidiary (E) operating in C with another non-profit subsidiary (F) operating in D.

You carry out your activities with those two subsidiaries, E and F. E is a for-profit sole proprietorship owned by X. It conducts pharmaceutical product licensing, marketing, patenting, copyrighting, trademark, corporate development, mergers and acquisition, and research and development. E represents about 30% of your total resources and operation. F is an independent, non-profit subsidiary. F conducts cancer testing and diagnostics, training and medical program intervention in D, as well as general public good works to promote health. Among this is the distribution of P - F is also the only non-profit distributor of your products.

Your activities consist of manufacturing and retailing an oral, pharmaceutical product, P, cancer testing kits, capacity strengthening workshops on cancer, and books about biological agents (50% of your total activities) and conducting clinical trials for an anti-neoplastic biologic (cancer vaccine) named O (50% of your total activities). P and O are prepared, packaged, labeled, and stored in C. They are sold to the public via distributors in the United States, Africa, and South and Central America. P and O were developed by X through G and E previous to your formation.

P is an herbal supplement that you state unlocks the human body's natural defense against cancer and infections. You charge m dollars per bottle to U.S distributors, n dollars per bottle to distributors in Africa, and retail price to consumers is k dollars. O is an intravenous, condensed form of P. It is currently undergoing phase 3 clinical trials and is not licensed in the U.S.

You also charge fees ranging anywhere from \$25 to \$250 for your cancer testing kits, workshops and books for customers in the U.S. and Africa. Your products and services are open to the public. You have no fee waiver policy for people who cannot afford your products and services. Most of your webpages are dedicated to selling these herbal supplements, testing kits, and related products. Each product advertisement page contains a PayPal link for easy purchase. You also conduct and advertise business via social internet and web search media through various outlets. You manufacture, distribute and/or retail these products through E. E is the sole supplier. You submitted a listing of ten different distributors of your products, a mix of for and non-profit entities in various countries. Although you had stated F was the only non-profit distributor of your products they were not included on this list.

You presented consolidated financial statements showing most of your income is from the products and services you offer. These are sold through various for-profit and non-profit distributors worldwide, including through your web site. You were unable to provide separate financial statements and/or filings for either G or E during the time you have been in operation. Instead, the expenses of the for-profit division E were reported on X's personal income tax return. E does not own any assets; however, E shares a business checking account with you. The checking account shows E's doing-business-as name. The account also shows direct deposits of checks issued to X for outside employment. You assumed all of G's assets and liabilities. The book value of the assets transferred was d dollars when the transfer of all the assets was completed. You did not provide the market value of the assets. You took over e dollars of liabilities from G. Among them was an unpaid salary to X. Your projected expenses, in addition to this liability, include research and development, travel, marketing, and other.

You have three board members X, Y, and Z. X is your president and was the majority owner of G. X is in charge of running your day-to-day operation. Y is your consultant and was a minority owner of G. Z is X's cousin. She performs consulting duties and formulates company policies. Your board is responsible for setting the prices of your products and services – you have provided no basis for how these prices are determined but have stated supply and demand drives sales. You have projected a salary of g dollars annually for each of your board members. Your Constitution indicates trustees will be positioned for life and only a member of X's bloodline can be your Chairman.

#### **Law**

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) 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 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 that 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 provides an applicant organization must show it serves a public, rather than a private, interest, and specifically 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.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed or of the underprivileged. The term "charitable" also includes the advancement of education.

Section 1.501(c)(3)-1(d)(5)(i) of the regulations provides, in part:

"the term 'scientific' as used in section 501(c)(3) of the Code, includes the carrying on of scientific research in the public interest. ... For research to be 'scientific', within the meaning of section 501(c)(3), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is 'scientific' does not depend on whether such research is classified as 'fundamental; or 'basis' as contrasted with 'applied' or 'practical'. On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on fundamental, as contrasted with applied, research."

Section 1.501(c)(3)-1(d)(5)(ii) of the regulations provides:

"Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc."

Rev. Rul. 68-373, 1968-2 C.B. 206 held that clinical testing is an activity ordinarily carried on as an incident to a pharmaceutical company's commercial operations. The fact that the testing must be done by highly qualified professionals does not change its basic nature. Therefore, such testing does not constitute scientific research within the meaning of section 1.501(c)(3)-1(d)(5)(i) of the regulations.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (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."



In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." Finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Federation Pharmacy Services, Inc., v. Commissioner, 72 T.C. 687; 1979 U.S. Tax Ct., aff'd, 625 F.2d 804; 1980 U.S. App. the Claims Court found an organization that operates a pharmacy, selling drugs at cost to elderly and handicapped persons was not exempt under section 501(c)(3) of the Code. Petitioner has no commitment to use excess receipts to provide below, or no, cost drugs to the elderly or handicapped. The higher court agreed the tax court decision that petitioner operates a pharmacy primarily for commercial purposes as it sells drugs at a discount determined by its cost, with no provision for sales below cost to the elderly and handicapped, in competition with profit-making drug stores. Fact that product sold by petitioner is helpful to health does not entitle it to an automatic IRC 501(c)(3) exemption.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.), cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the Claims Court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a non-exempt commercial purpose. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, is its primary goal".

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the District Court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. As the court stated: "Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent

and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, among other things, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations."

### **Application of Law**

An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated for exclusively for charitable, educational, scientific, or other exempt purposes. Sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. You engage in the substantial non-exempt activities of selling herbal products and cancer testing kits at market prices and operate in a manner similar to private commercial entities. See, Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), above. In the decree, 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.

You have not shown that your structure and manner of operation do not result in inurement and/or private benefits to X in accordance with section 1.501(c)(3)-1(d)(1)(ii) of the regulations. This is evidenced by the fact that your activities consist of marketing and selling products created by X and sold through X's for-profit company. In addition, you have a for-profit subsidiary, you inherited relatively large payroll liability for X from G, X claims your expenses in his personal income tax deductions, and you and X share the same checking account. You also failed to establish that you are governed by an independent Board of Directors because your board members have a conflict of interest in the form of family relationships. Further, your Bylaws stipulate future control of your operations through a family member of X.

Your activities do not relieve the poor and distressed as defined under section 1.501(c)(3)-1(d)(2) of the Regulations because you sell services and products for the same fees regardless of the affordability of your clients to pay. Providing drugs even at cost to the elderly and handicapped was construed as a commercial purpose by the courts citing that the organization was in competition with profit-making drug stores. (Federation Pharmacy Services, Inc.)

In B.S.W. Group the Court found a corporation did not satisfy the operational test because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Similar to this entity and other commercial ventures, you have operated for a profit in the past and continue a relationship with a for-profit subsidiary. You rely upon fees for services for support, and have indicated supply and demand of goods drives pricing and sales. Your clients range from for-profit and non-profit distributors to the general public, who may purchase your products on the open market. You are operating a business ordinarily carried on by commercial ventures organized for profit and do not meet the operational test.

Your main operation is producing and selling herbal supplements, cancer-testing kits, and books about biological agents, which is indistinguishable from commercial herbal supplement producers in price and operation. The way you advertise also is not different from commercial vendors. For example, almost your entire website is devoted to online selling and product information similar to a commercial business. You are reliant upon sales of your products for funding. Therefore, the manner of your business operation with regard to pricing, advertising, and competition is similar to the organizations described in Airlie Foundation v. Commissioner and Easter House v. U.S., above.

In Easter House the Court found an organization's health-related services were merely incident to their operation of an adoption service, which, in and of itself, did not serve an exempt purpose. Similar to this entity, while you provide drugs and cancer testing that advances health, these purposes are incidental to your operation of selling pharmaceutical products and relating services. You are in competition with other companies selling similar products. You engage in advertising of those products. You have set up supply and wholesale distribution chains, including for-profit entities, and are serving a business purpose, rather than an exempt purpose, as your primary goal.

You are similar to the organizations in Rev. Rul 68-373, above because you are operated primarily for the purpose of carrying on applied research for production of commercial drugs. See section 1.501(c)(3)-1(d)(5)(ii) of the regulations. Accordingly, your clinical trials and research for cancer vaccines are not "scientific" within the meaning of section 1.501(c)(3)-1(d)(5)(i) of the regulations. Your for-profit successor was already selling the herbal supplement to boost natural body defense against cancer demonstrating a commercial rather than scientific purpose. Your history, operation, and website shows your clinical trials and research for cancer vaccines are activities of a type ordinarily carried on incidental to commercial drug development.

### **Conclusion**

Based on the facts and information provided, you are not operated exclusively for exempt purposes. You fail the operational test, your activities result in impermissible private benefit, and you serve a substantial private, non-exempt, commercial purpose. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of

Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. 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:

"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 appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal 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](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

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

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

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

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure, Publication 892