



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201525011**
Release Date: 6/19/2015
UIL Code: 501.03-30
501.36-01

Date: March 26, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Director, Exempt Organizations

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: January 28, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Organization

C = Number

D = Organization

F = Number

G = Number

W = City

X = State

Y = Date

k = Amount

m = Amount

n = Amount

p = Amount

q = Amount

r = Amount

s = Amount

t = Amount

v = Amount

UIL:

501.03-30

501.36-01

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issue

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

Facts

You were incorporated in the state of X on Y. Your Articles of Incorporation state your purposes are:

- To provide business consulting services to new or establish business owners,
- To provide grant writing services,
- To provide fiscal agent services to non-established non-profit organizations,
- To assist in the startup of new small business, and
- To provide training and administration service.

There was another document submitted with your application for exemption titled "Articles of Incorporation" that does not show proof of filing with the state of X. This document states that your purposes are:

- To provide business consulting services,
- To provide grant writing services,
- To provide services as a fiscal agent to for-profit organizations, nonprofit organizations, and LLC organizations,
- To educate the general public of how to start a new business, grant writing, operating a non-profit or for-profit business,
- To provide social services, training, and job development for children, youth and families, and
- To do all such things as are incidental or conducive to the attainment of the above objects within the purview of section 501(c) (3) of the Internal Revenue Code.

Article Five of this document also states that, "the corporation does intend on issuing stock to only employees of the corporation."

You currently have six board members. Four of your board members are related. Two of your board members, the CEO/President and the Treasurer, will be compensated. Section 3.1 of your bylaws states that there shall be seven directors of the corporation and each director shall hold office until the next annual meeting of shareholders and until his/her successor has been elected and qualified. Section 3.12 of your bylaws states that the term of office of a director may be terminated voluntarily, automatically upon termination of ownership of B, by action at a meeting of owners, or for cause by a two-thirds vote of the board.

You were formed to provide services to individuals, non-profit organizations, and for-profit businesses. You provide grant writing, business plan, and business consultation services to individuals and small business owners. You provide employment training and entrepreneurship training as well as training on how to start a new business, and you assist in the operation of non-profit and for-profit businesses. You also provide fiscal agent services. Through your fiscal agent services, funds are given to small business owners who are not tax-exempt or to for-profit agencies searching for grant services that do not have non-profit status. If a grant proposal is approved, you will monitor and document funds provided to the company.

In the past, you have provided assistance in grant writing for individuals, entrepreneurs, and small business owners who were seeking grant funding. You have also provided free consultation, training, and community resources throughout W, X. You listed the following services that are available for your customers:

- Grant writing and research assistance
- Consultation for small business start-up and establish business owners

- Training and administration services
- Fiscal agent services to non-established non-profit organizations and for organizations without tax exempt status

The services listed above are offered on a low cost contracted payment plan to your customers. You also plan to provide free training in the areas of entrepreneurship and one-on-one business plan overview reviews. You will offer additional trainings on creating a business plan, networking, and how to write proposals that will be offered for low cost fees.

You provided a list of fees for many of your services. The fee for business start-up for small business owners is \$m. This fee is made up of the following:

- Federal and state identification number – \$s
- Business plan – \$n
- Articles of Incorporation – \$p
- Bylaws – \$q
- 501(c)(3) – complete entire application and attachments – \$r

The fees for small business start-up are subject to change based on the need of the items. You may also offer these services for free to those who demonstrate an inability to pay or you may offer them on a sliding scale.

You charge \$v and/or G% of an award grant for grant proposals/RFPs. The amount charged may vary depending on the level of research, documentation, and travel for each project. The fees are created based on the going average of other grant writers.

You charge \$v per month or F% of the awarded grant for your fiscal agent services. The services can include administration services with varying fees, contract monitoring and documentation for \$s per month, and payroll and account services for \$v per month.

You offer several add on services including training on topics such as case management, customer service, business tax, employee tax, and other requested training for business operations at \$s per hour. You offer payroll services for \$s per month for 1-5 employees and \$t per month for over 5 employees. Your quarterly tax services are \$p per quarter and you work on memos and contracts for varying costs. You also work on policies and procedures and employee handbooks for \$k.

Your fees are compared against local consultants in the area and the wages section of the D statistics. You create the fees based on the going average of other grant writers and reduce them to meet your target population. All payments for services are subject to negotiation. Payment plans are set up with a down payment and then monthly installments thereafter. Your fees are non-refundable if services have been provided. Your clients have a C day grace period to cancel all services in writing and you will charge a cancellation fee that is deducted from the funds that are to be returned.

Your clients include start-up low-income minority clients, the disabled, veterans, women, disadvantaged workers, and low-income prospect business owners. In the past, you have provided services to individuals and small businesses that were unable to pay or they provided a reduced payment to you.

Law

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

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (“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 exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

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 Revenue Ruling 69-266, 1969-1 CB 151, an organization formed and controlled by a doctor of medicine, “hired” to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code.

In Revenue Ruling 69-528, 1969-2 C.B. 127, an organization formed to provide investment services on a fee basis exclusively to organizations exempt from federal income tax under section 501(c)(3) of the Code was found to not be exempt under 501(c)(3) of the Code.

In Revenue Ruling 71-529, 1971-2 C.B. 234, (distinguished by Rev. Rul. 72-369, below), a nonprofit organization that provided assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code. By assisting the participating colleges and universities to manage their endowment or investment funds more effectively for fees that represent less than fifteen percent of the total cost, the organization was found to be operating in an exclusively exempt manner.

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

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an “underlying commercial motive” that distinguished its educational program from that carried out by a university.

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

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) 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 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from 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." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Airlie Foundation v. I.R.S., 283 F. Supp. 2d 58 (D. D.C. 2003), the District Court found that the organization was formed principally to organize, host, conduct, and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not operated exclusively for charitable, religious, or educational purposes. Although several of your activities consist of providing education, more than an insubstantial part of your operations is providing services for fees, such as consulting and grant writing.

You are not described in section 1.501(c)(3)-1(a)(1) of the Regulations because you are not organized and operated exclusively for one or more exempt purposes. You operate as a consulting agency. Your fees are set at current market rates and are compared against local consultants in the area and the wages section of the D statistics.

You are not described in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you have failed to establish that you are not operated for the benefit of your founder and other board members. A document titled "Articles of Incorporation" that you submitted states that you intend to issue stock to employees of the organization. Your CEO/President and Treasurer are both employees and your bylaws refer to shareholders and owners of the corporation.

You are similar to the nonexempt organization in Rev. Rul. 69-266. Like that organization, you charge prices similar to what comparable companies charge for the same services.

You are similar to the organization described in Rev. Rul. 69-528 in that you provide services for a fee to individuals and unrelated for-profit and non-profit entities. The fact that some of your services may be provided to low-income minority clients, the disabled, veterans, women, disadvantaged workers, and low-income prospect business owners is not sufficient to characterize the activities as exempt within the meaning of 501(c)(3) of the Code.

You are not similar to the exempt organization in Rev. Rul. 71-529. The fees for your services are priced at market rates, they are not substantially below cost, and they lack the donative element necessary to be considered charitable. Your pricing policy is commercial in nature. Additionally, your services are not limited to 501(c)(3) organizations.

You are similar to the nonexempt organization in Rev. Rul. 72-369. You are providing consultation services on a regular basis for a fee and you operate in a manner similar to a trade or business ordinarily carried on for profit. You do not limit your services to 501(c)(3) organizations. Providing such services is a regular trade or business ordinarily carried on for profit. The fact that some of your services are provided to low-income minority clients, the disabled, veterans, women, disadvantaged workers, and low-income prospect business owners is not sufficient to characterize the activity as charitable.

Since you are operating a regular trade or business, you have an underlying commercial motive as noted in Better Business Bureau of Washington D.C. Further, your operations benefit your board members, which also constitutes a substantial nonexempt purpose (see Old Dominion Box Co.). Your commercial motive and substantial nonexempt purpose preclude exemption under section 501(c)(3) of the Code.

Your operation of a consulting company constitutes common commercial activities, rather than activities that further charitable or educational purposes. Your operations are similar to those described in B.S.W. Group and Airlie Foundation, as your services are competing with a number of non-exempt commercial, for-profit companies through your product pricing pattern, compensated staff, and clients you serve.

Conclusion

Based on the facts provided, you do not meet the operational test under section 501(c)(3) of the Code. Although several of your activities include providing education, your main activities consist of offering various business services for fees. You are therefore operating in a commercial manner and you are not an organization described in section 501(c)(3) of the Code because you are not operated exclusively for charitable, educational, scientific or religious purposes. Contributions to you are not deductible under section 170 of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:
Under penalties of perjury, I declare that I 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.

For authorized representatives:

Under penalties of perjury, I declare that I prepared 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 representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

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

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892