



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

Release Number: **201545030**  
Release Date: 11/6/2015  
UIL Code: 501.33-00  
501.35-00  
501.36-01

Date: August 13, 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,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

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: June 22, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

P = State

Q = Organization

x = Date

**UIL:**

501.33-00

501.35-00

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.

**Issues**

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

**Facts**

You were formed as a corporation on date x in the state of P. Your Articles of Incorporation state your specific purpose is to provide at-risk youth the resources to intern in the entertainment industry. Your application for exemption states your purpose is to provide resources and outlets for musical and artistic creations.

You are a membership organization that will provide entertainment employment. The basic fundamentals of your membership are to provide public awareness and creativity. Your membership requirements state that artists must promote (given the authority) the record label, bring public awareness, and most of all, be their creative selves. The responsibilities of membership are for members to give back to the community by creating their own non-profit organizations or donating in support of a non-profit.

85% of your time is spent on operating the record label. Your record label activities include technical engineering and vocal recording put towards creating an artist's music and sound. Some projects may include photo shoots for the artist that are either promotional or for a portfolio. You provide the opportunity to intern in

the entertainment industry as well as give advisement. You will own rights to any intellectual property that pertains to your projects whether it will be assisting, conducting, or promoting.

You select artists by looking for passionate artists that love their craft and work hard to make it in the industry. You also select artists according to their mind set and what goals they have regarding their music and the industry. There are no recent artists signed to the label at this time. When there are artists signed, they will receive compensation from a percentage of their work sold. When we asked for samples of contracts you only submitted a photograph and video release form.

Records will be sold (under contract) to big or small businesses in any city, stores, or shops. This will be handled by your marketing department and sales department. Prices for any materials (e.g., CDs) will be determined by the sales department.

You will hold monthly themed photo shoots where the artists have to dress up and practice age appropriate poses. This is extremely important for the industry. There will also be red carpet events training for those 18 and over. Individuals will be introduced to red carpet events and will be trained to host, network, and coordinate with entities. Also, exposure to the entertainment industry through you includes attending local events and being introduced as a nonprofit youth program. You will introduce youth to the option of formulating a nonprofit for themselves so they may succeed in life versus working for industries at a minimum rate. You will seek out local churches, schools or charities to assist in volunteering their time to help a cause.

You work with another non-profit organization on charitable events for the youth of the community. Charitable events may include a showcase of musicians with live entertainment, educational speeches for the underprivileged, or a program in preventing cruelty or bullying. The live entertainment might provide education and awareness for the community to prevent bullying in schools or teen centers. The events also enable you reach out to those that may value the opportunity to intern in the entertainment industry or reach those seeking free advisement. The events may include food for homeless or low income families as well as clothes or donations. The participants of these events are either assigned or volunteered by musicians, artists, bands, DJ's or equipment stage crew. They also include motivational, educational, or awareness speakers. These events are open to volunteers and the community. Participants must be 13 years old or older. You did not indicate the percentage of time or funds spent on your charitable activities but you did indicate that you plan to have monthly events.

#### **Law**

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for 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 ("Regulations") provides that in order to be exempt as an organization described in section 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) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) 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 that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit 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." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Revenue Ruling 66-178, 1966-1 C.B. 138, states a nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by a panel of qualified judges for viewing and are gratuitously displayed is exempt from Federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 67-392 held that a nonprofit organization which encourages and promotes the advancement of young musical artists by conducting weekly work-shops, sponsoring public concerts by the artists, and securing paid engagements for the artists to improve their professional standing may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954

Revenue Ruling 76-152, C.B. 1976-1, 151, states a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Fides Publishers Assn. v. United States, 263 F. Supp. 924 (1967) the government retroactively revoked the taxpayer's exempt status, concluding that, for the previous five years, the taxpayer was engaged primarily, if not solely, in publishing activities. The court noted that, to qualify for section 501(c)(3) exemption, the taxpayer must be "organized and operated exclusively for" an exempt purpose. The court rejected the taxpayer's argument that, rather than its primary activity, the court should focus on the end to which that activity was taken, namely, religious education. The court pointed out that the taxpayer's sole activity and purpose was the carrying on of the publishing trade and held that the taxpayer's purpose, rather than its goals, were the focus of section 501(c)(3).

#### **Application of law**

You are not as described in section 501(c)(3) of the Code because you are not organized and operated exclusively for exempt purposes. You fail the operational test as you are not operated exclusively for exempt purposes as described in section 1.501(c)(3)-1(a)(1) of the Regulations. You spend 85% of your time on the record label activities. As explained in section 1.501(c)(3)-1(c)(1) of the Regulations, you will not be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial amount of your activities further nonexempt purposes.

You are unlike the organization described in Rev. Rul. 67-392 which promoted the advancement of young musical artists by conducting weekly workshops, sponsoring public concerts by the artists, and securing paid engagements. You are looking for promising artists to create records and then sell them in a commercial

manner. Any educational or charitable activities you conduct are incidental to your commercial purpose of operating a record label.

You are very similar to the organization described in Better Business Bureau of Washington, D.C., Inc. because the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Although you may have opportunities for students to learn about the recording industry, any educational purposes are overshadowed by the commercial nature of your activities.

You are similar to the organization in Fides Publishers Assn. which printed, published and sold products to promote religious culture. The organization argued that, rather than focusing on its primary activity, the court should focus on the end to which that activity was taken, namely, religious education. You have indicated your purpose is to advance the education of the artists through the production and distribution of their music. Much like the organization in this case, you mark up and sell your products to stores. The end result of your distributions includes some education of the artists, but your purpose is to purchase and distribute records, not advance education. For this reason your record label activity is furthering a commercial rather than an exempt purpose under 501(c)(3).

Additionally, you are not as defined in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you are operating for the private interest of your members whose music you produce and sell. Moreover, the education of the students or the charitable activities you may conduct is secondary to record label activities.

You are not like the organization in Revenue Ruling 66-178 because you are a membership organization consisting of musical artists for whom you produce records and sell. The artist members also earn money for the records sold. Thus, you are operating for the private benefit of your members. You are like the organization in Revenue Ruling 76-152 because the artists whose musical works are promoted and sold are directly benefiting from your operations. Therefore, you have a more than insubstantial non-exempt purpose.

### **Conclusion**

Based on the information provided, you do not qualify for exemption under section 501(c)(3) of the Code. You are not organized and operated exclusively for charitable or educational purposes within the meaning of section 501(c)(3) of the Code because you operate in a commercial manner for the private interests of your members.

### **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](http://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