



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

Number: **201548021**  
Release Date: 11/27/2015

Date: September 1, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.32-00; 501.33-00

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 11, 2015

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = State  
C = Date  
D = Name  
G = Fundraiser  
H = Fundraiser  
N = For Profit Name  
X = Product Name

**UIL:**

501.32-00

501.33-00

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**

Your president D owns N, which sells product X to businesses. N also incorporated you in B on C. Your Articles state "The entity is formed to feed the hungry in B. It will allow groups to sell X made by N to fund raise for their church, school, and events. X will be purchased by donor/patrons, but X will be delivered to a food bank type entity or charitable organization that feeds B's hungry. The donor/patron who purchases the X will be the person who selects from a list of ten charitable entities who will receive X. The donor/patron will receive a donation receipt for tax purposes. Any assets upon liquidation shall be distributed to the ten charitable agencies who feed the hungry and the poor."

You are a new fundraising organization that teaches youth how to help their communities while earning money to support group and school activities. You are offering the following program fundraisers to nonprofit organizations such as schools, community groups and religious organizations:

- Your first program is G. To execute a G, a group enrolls with you and agrees to participate in a fundraiser for two to four weeks. Group members will solicit participants to purchase X. The individual selects the number of X to purchase and will receive a tax deduction. They will select a community organization such as a homeless shelter, or food bank to receive the X purchased. The group collects, funds and submits the funds and orders to you at the end of the fundraising period. You give the group y percent of the proceeds. The remaining percentage is used by you to cover wholesale X prices and fulfillment costs. You buy X at wholesale prices from N, fulfill the orders, and makes delivery arrangements with the community organizations to receive X. Groups may also apply for a grant from you to supplement its fundraising activities.
- Your second program is H. To complete an H, a group enrolls with you and completes an advanced order form. The group purchases X at wholesale. The group picks up X and heats, serves, and sells them during its event at retail pricing. The group sets the retail price. All the proceeds support the group.

You will purchase X from N at whole sale price . The wholesale price is the list price, determined by N, is for distributors nationwide.

You will also accept donations toward group fundraisers or for general purposes. You plan to have additional fundraisers such as a gala, 5K or golf tournament to raise funds for providing grants to groups. Your funds will come from donations. Your expenses are contributions paid out and other expenses.

You have four board members other than D who will be the primary interface between you and N. In addition, you have a similar name as N and use a similar logo as N.

You believe through your programs, communities will grow stronger. Students will learn to give back to communities while helping other charitable organizations.

#### **Law**

IRC section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure 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 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(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 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 Income Tax 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). 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(c)(2) of the Income Tax Regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational 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 Church by Mail, Inc. v. Commissioner, 765 F. 2d 1387 (9<sup>th</sup> Cir. 1985), affg. TCM 1984-349, Tax Court concluded that the extent of the integration between the operations of a non-profit entity and related for-profit entities controlled by the non-profit directors precluded exemption. Furthermore, the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9<sup>th</sup> Circuit Court of Appeals, in affirming the Tax Court's decision, stated: "*The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church.*"

In International Postgraduate Medical Foundation v. Commissioner, 56 T.C.M. 1140, 1989-36, the court ruled as non-exempt under section 501(c)(3) of the Code an organization formed to sponsor medical seminars and symposia that was founded and run by an individual who was a shareholder and officer in a for-profit travel agency that provided travel arrangement services to the nonprofit. Finding that the nonprofit was formed to obtain customers for the for-profit's business, the court concluded that the nonprofit had, as a substantial purpose, increasing the for-profit's income. When a for-profit organization benefits substantially from the manner in which the activities of a related nonprofit organization are carried on, the court reasoned, the nonprofit organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if the nonprofit furthers other exempt purposes.

In Arlie Foundation v. Commissioner, 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 paid significant advertising and promotional expenses and derived substantial income from 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.

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, inter alia, whether the organization uses commercial promotion methods (e.g. advertising) and the extent to which the organization receives charitable donations.

#### **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 purposes.

You are not as described in Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations because you fail both the organizational and operational tests.

You do not meet the requirements in Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your Articles of Incorporation state you are organized "to feed the hungry"; the provisions in your Articles of Incorporation do not limit your purposes to exclusively 501(c)(3) purposes. As a result, you have not satisfied the organizational test required by section 1.501(c)(3)-1(b)(1)(i) of the regulations.

You are not described in Section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial part of your activities are devoted to non-exempt private purposes; for example, you are operating for the private purposes of N, because you are providing N a sales outlet to market and sell its products. In addition, participants pay the same amount for X as distributors nationwide. You are also operating for substantial commercial purpose because you are selling products to those who participate in your fundraising program for them to sell at a profit.

As described in section 1.501(c)(3)-1(c)(2) of the Regulations, you are not operated exclusively for exempt purposes because your net earnings inure to the benefit of private shareholders or individuals. This is evidenced by the fact that you were incorporated by N who sells X and is owned by D, your president. Although you have adopted a conflict of interest policy, this does not change the fact that D through N is profiting from this relationship.

You are not as defined in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations, because you are operating for the private interests of N and D. Through your programs, N is able to grow its business and, enhance its visibility as well as increase its profits.

You are like the organization in Church by Mail. Because you are purchasing X from N, you are essentially providing a market for N's products. You are increasing N's market share through your fundraising programs.

You are like the organization in International Postgraduate Medical Foundation because your activities will produce a substantial amount of revenue for X. Therefore, you were formed for the substantial non-exempt purpose of providing a related commercial entity with business revenue.

You meet several of the "commerciality" factors found in Airlie Foundation v. Commissioner. You are in competition with for profit commercial entities; you provide an insubstantial amount of low cost or no cost items and you appear to receive insubstantial charitable donations.

### **Conclusion**

Based on the information you provided, we are not able to conclude that you are organized and operated exclusively for charitable purposes. You cannot qualify for tax exemption because more than an insubstantial part of your activities result in private benefit to N and N's owner D.

Accordingly, you do not qualify for exemption under section 501(c)(3) 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](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