



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: September 18, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-05; 501.03-08

Number: 201550043
Release Date: 12/11/2015

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: July 27, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
D = Date
F = Name
G = Name
H = Name
J = Name

UIL:

501.03-05
501.03-08

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 pass the organizational test under Section 501(c)(3)? No, for the reasons described below.
- Do you pass the operational test under Section 501(c)(3)? No, for the reasons described below.

Facts

You were incorporated in B on D. Your Articles of Incorporation state, in part:

- Your purpose is "to help people in many different ways by enabling people and business connections."
- Your business activity is to help people in many different ways by enabling people and business connections.

You will accomplish your purpose by developing an information based website which will allow individuals and businesses to connect through the World Wide Web.

Your website is not yet operational; you will seek donations from celebrities who share your vision and would be willing to donate their time for marketing and advertising campaigns in order to gain resources to build the website. You also plan to form confidential relationships with IT companies who will build the website. For other startup costs, you will seek fundraising opportunities from personal solicitations, foundation and government grants. Once the website is live, you will rely on internet based contributions through the website. You will have a feature on your website, J to solicit donations to pay for overhead expenses as well as update and maintain the website; donors will receive gifts depending on the amount of charitable contributions; gifts will include music downloads, movie DVDs, books, magazines, and speaking/motivational DVDs. Donors will also have the option to opt out of receiving gifts, in order to help cut down the costs.

You presently have no contracts and no employees; however, once employees are hired you will require them to sign a confidentiality agreement and follow your policies. You will consult with legal counsel before you hire anyone to prepare appropriate documents. You will not seek publicity until the website is fully operational.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, literary, or educational 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(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 limit its purposes to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(i) of the Regulations provides that an organization may be exempt as an organization described section 501 (c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

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.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" is used in Section 501(c)(3) of the Code in its generally accepted legal sense and includes, among other things, lessening the burdens of government, relief of the poor and distressed or of the underprivileged, advancement of education or science, erection or maintenance of public buildings, monuments, or works, and promotion of social welfare by organizations designed to accomplish any of the above purposes, or in part to defend human and civil rights secured by law.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations provides that the term "educational" relates to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1 (d)(3)(ii) of the Regulations (Example 2) provides that an educational organization includes an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

In Rev. Rul. 76-206 a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs, all of which activities tend to increase the station's revenues, **does not** qualify for exemption under section 501(c)(3) of the Code. There was no control by the for profit radio station. There was no direct flow of funds from the organization to the for profit. Although an incidental private benefit will not destroy the qualification of an

otherwise educational organization, where an organization is serving both public and private interests the private benefit must be clearly incidental to the overriding public interest.

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 of importance of truly exempt purposes.

In Easter House v. United States, 12 Cl.Ct. 476, 487 (1987), citing section 1.501(c)(3)-1(d)(1)(ii) of the regulations, aff'd without opinion, 846 F.2d 78 (Fed.Cir.1988) that an organization is not operated exclusively for exempt purposes if it serves a private rather than a public interest.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court held that Airlie Foundation did not meet the requirements as an organization described in section 501(c)(3) of the Code because its operation of a conference facility was a commercial activity. The foundation charged conference fees comparable to or lower than other nonprofit conference centers and substantially lower than commercial conference centers. It advertised only from their website and it retained very small earnings from operations. While many of the clients were exempt and nonprofit organizations and government entities, many others were corporate or private clients conducting special events and weddings. The court conceded that certain factors, including the fee structure and subsidization practice, emulate noncommercial characteristics; however, other factors, such as the nature of the clients and industry competition, gave the activities a commercial hue. Thus, the court concluded the manner of operations furthered substantial nonexempt purposes.

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 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 your purpose is "to help people in many different ways by enabling people and business connections." This is outside the parameters of 501(c)(3) and consequently you fail the organizational test.

You do not meet the operational test described in Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations because more than an insubstantial part of your activities is not in furtherance of an exempt purpose;

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 the small businesses who can register on your website

You are not operating in accordance with Section of 1.501(c)(3)-1 (d)(2) of the Income Tax Regulations.

. The term "charitable" includes the following: relief of the poor and distressed or of the underprivileged; advancement of education or science; lessening the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above. Operating a web site for free is not a charitable activity as defined in the regulations. Further, you are not exempt merely because your operations are not conducted for the purpose of producing a profit.

You are not operating for educational purposes within the meaning of 1.501(c)(3)-1 (d)(3)(i) of the Regulations. You are not providing (a) instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

. You do not conduct any educational activities that instruct individuals or train individuals for the purpose of improving their capabilities.

You are operating like the organization in Rev. Rul. 76-206. You are making the general public aware of products and/or services from small businesses and other organizations to encourage the public to utilize these products and/or services. This will make them more competitive and in turn will increase the revenues of said organizations.

You are similar to the organization described in Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 179 (1945). Even though providing information on the internet could be deemed educational, the facts show you operate for substantial non-exempt purposes.

You are like the organization in the court case Airlie Foundation v. Internal Revenue Service because your operations further substantial non-exempt purposes.

Our Response

Although you may connect people with charitable resources and benefit the public, your activities also benefit for profit businesses. This private purpose is more than insubstantial and like the organization in Better Business Bureau operating for substantial non-exempt purposes precludes exemption under Section 501(c)(3).

Conclusion

The facts clearly show that you are not operated as a charitable or educational organization described under section 501(c)(3) of the Code. You are not exclusively formed or operated for one or more exempt purposes 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. If you have questions, you can contact the person listed at the top of this letter.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892

[cc:]