



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

Release Number: **201615016**  
Release Date: 4/8/2016  
UIL Code: 501.03-30

Date: January 15, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years: ALL

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: November 18, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Name

C = Name

M = LLC Name

P = Date

Q = State

R = Website Name

x = Number

**UIL:**

501.00-00

501.03-00

501.03-05

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**

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

**Facts**

You were incorporated on date P in state Q by B who also owns M. M is a for profit LLC dance company which provides quality education and training for aspiring dancers. B formed M about one year before you and your name includes the name of M. Further, you provided your website address as R; this address is also listed in your bylaws and is the website of M.

Your Articles of Incorporation state your initial planned activity is education/empowerment workshops and performing arts classes for underserved communities. There was no dissolution clause. Because your Articles of Incorporation did not have the required provisions for 501(c)(3), you later attested that you would amend them; you have not provided an amendment nor is there evidence on Q's Secretary of State's website that an amendment was filed.

Your goal as described in your application is to serve underprivileged girls ages 13-17 through a performance arts curriculum designed to increase self-confidence, health and fitness, cognitive abilities and life skills. Your objective is to strive to improve success by encouraging healthy living and education and emphasizing the importance of morals, values, ethics, spirituality, and practicing discipline, thereby, empowering all individuals to become socially and economically responsible in society.

One of your activities is awarding Creative Arts Scholarships for underprivileged individuals. These scholarships will only be awarded to students who cannot afford to attend M. Currently, M has enrolled about x students and only 20% of M's students are able to afford tuition and additional dance costs; you later wrote M is projected to receive 20% or less of its income from you.

Another one of your activities is conducting Spring Break and Summer Camp program opportunities during out-of-school hours; students will be exposed to various creative art categories including drama, digital media, public speaking, creative writing, and visual arts. Moreover, the camps will focus on various innovative dance techniques and will include educational tours, field trips, inspirational speakers, master dance classes, and workshops. Furthermore, you will conduct an annual dance workshop for under privileged girls and will purchase dance services from M. In addition, M may be utilized for various empowerment workshops and dance camps hosted by you. However, you will not exclusively use M for dance camps/workshops, but stated M will be included in all projects. Your board members will decide on the price of such services after researching the fair market value of such services; they will not exceed fair market value. The board will decide on all compensation that involves M or any other for profit entity.

Besides B, your board consists of C as your vice president who is also M's artistic director as well as three other officers. B and C are projected to receive compensation from you. B also signed and approved your Bylaws alone as a board member

Your proposed budgets show that you expect to receive income from donations, gifts, grants, and admission fees. You stated that "Fundraising programs will consist of website solicitations. Donations will be open to anyone via the website R routed to an account, with your name". You plan to expend funds on salaries and wages, scholarships awards, and occupancy expenses.

Finally, your activities also consist of an afterschool program during the school year and an annual youth conference to recognize and reward outstanding achievements of girls and young women in the community.

#### **Law**

Section 501(c)(3) of the Code provides that corporations may be exempt from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(a) exempts organizations described in Section 501(c) of the Code from federal income taxation.

Section 1.501(a)-1(c) of the regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

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 to 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(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose, either by an expressed provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(a)(1) of the 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(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 in not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the 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 as defined in Section 1.501(a)-1(c).

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 establish 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."

Revenue Ruling 64-175, 1964-1 (Part 1) C.B. 185, holds that a corporation organized for the purpose of promoting the dramatic arts qualifies for exemption as an educational organization under section 501(c)(3) of the Code. The ruling supports the view that a nonprofit organization that preserved and maintained classical music programming in a particular locale served an educational purpose. However, in order for such an organization to qualify for exemption under section 501(c)(3) of the Code, it must serve a public rather than a private interest. 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. A contrary finding will indicate that the organization is serving a private 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 or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F2d 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 International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36, the Tax Court concluded that when a for-profit organization benefits substantially from the manner in which the activities of a related

non-profit organization were carried on, the latter organization was not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

In KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 166 F.3d 1200 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under section 501(c)(3) because its activities resulted in a substantial private benefit to its founders.

#### **Application of law**

You are not as described in Section 501(c)(3) of the Code and Section 501(c)(3)-1(a)(1) of the Regulations because you do not satisfy the organizational and operational requirements of the Code and Regulations.

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 only state your initial planned activity is education/empowerment workshops and performing arts classes for underserved communities. Because this statement is too broad concerning the organizational test, you are not organized exclusively for purposes described in the regulations. Moreover, your Articles of Incorporation do not have a dissolution provision as required by Section 1.501(c)(3)-1(b)(4), which also causes you to fail the organizational test.

You do not meet the provisions of Section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. You are operating to fund students to attend M as well as include M in all projects. M is owned by your founder, B. This illustrates you are serving substantial private purposes.

You are not described in Section 1.501(c)(3)-1(c)(2) of the Regulations because your net earnings inure to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c). Because the owner of M, maintains a position of control in you as your president, she is considered an insider. Moreover, you are awarding scholarships for individuals to attend M which is owned by B. In addition, you indicated you will include M in all projects. Because B is profiting through your relationship with M, you are precluded from exemption under Section 501(c)(3).

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You are operating for the private interests of B, and M. This is evidenced by the following:

- You are awarding scholarships for individuals to attend M which is owned by your founder.
- M may be utilized for various empowerment workshops and dance camps hosted by you.
- The fact that your bylaws lists M's website as your web site.
- The similarity between your name and M's.

These facts illustrate you are operating for private interests because M is in a favorable position to benefit from your activities.

You are unlike the organization described in Revenue Ruling 64-175. As noted in that ruling, an educational program that serves both public and private interests must show that any private interest served is incidental to the public's benefit. Your program serves to benefit M and B, the owner of M in a more than incidental manner. Scholarships will be paid only to girls participating in your program is contingent upon first being a

student at M. These scholarships provide increased revenue to M that would not be received were it not for your activities.

You are like the organization in Better Business Bureau v. Commissioner. Although your organization may have some educational activities, the presence of the non-exempt purpose of providing funding to individuals for girls to attend M the for profit company of B, precludes exemption.

You are similar to the organization described in International Postgraduate Medical Foundation (IPMF). Your founder is in a position of control and owns a for-profit company which benefits substantially from the manner in which your activities are conducted. Like IMPF, you are not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if you further other exempt purposes.

Like the organization in KJ's Fund Raisers v. Commissioner, you operate for the substantial private benefit of your founder B and her business, M.

### **Your position**

You stated that M expects to receive per scholarship for a dance year and a flat rate of no more than x dollars per dance camp/workshop. M will not be used exclusively for dance camps/workshops. Based on contracted services and scholarships, M is projected to receive up to 20 percent of its income from you. You state you will conduct other programs other than dance camps/workshops and scholarships.

### **Our response to your position**

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3). Even though some of your activities may be educational, you are operating to benefit M and B. Moreover, your criteria for funding scholarships to M to pay fees for under privileged students and the fact you will use M in all projects illustrates you were formed to support B and her for profit business, M. Although you may have some educational activities and programs, this does not overcome the fact that your net earnings are inuring to the benefit of B through M.

### **Conclusion**

Based on the information submitted, you are not organized or operated exclusively for one or more purposes described in section 501(c)(3) of the Code. Your Articles of Incorporation do not contain adequate purpose and dissolution clauses as required by IRC 501(c)(3). Your net earnings inure to the benefit of insiders causing you to be precluded from exemption under Section 501(c)(3) of the Code. In addition, you are operating for the benefit of M, a for profit company. Since you fail both the organizational and operational tests, you do not qualify for exemption as an organization described in 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,

Jeffrey I Cooper  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892