



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

Number: **201620011**
Release Date: 5/13/2016

Date: February 19, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00; 501.32-00

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: December 14, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Name

C = Name

D = Name

E = Name

F = Name

G = Group Name

H = State

J = Date

v = Number

w dollars= Amount

x dollars= Amount

y dollars= Amount

z dollars= Amount

UIL:

501.00-00

501.32-00

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

You were incorporated in the State of H on J. Your Articles state, in part, that you were formed to:

- Defend the civil rights and constitutional rights secured by the laws of the United States for G in America.

- Provide qualified legal representation and assistance for criminal, civil, appellate, habeas corpus and immigration proceedings for G in America.
- To promote and develop civil rights and constitutional rights of G in America; and
- To provide legal assistance and representation to G organizations and individuals regarding compliance with trade regulations established by the Treasury Department or other federal criminal statutes for charitable activities.

You are operating a law center that will provide legal representation and assistance to defend G individuals against injustice in American courtrooms, prisons, and communities. You will focus on federal criminal cases involving constitutional issues dealing with national security, religious freedoms, and constitutional torts on the federal level, as well as religiously motivated deportation issues, habeas petitions on constitutional grounds, and federal violations of constitutional law in civil cases. You have a close connection with F, a 501(c)(3) organization because your charitable purposes are compatible and connected with each other.

C and D who are your officers and directors as well as husband and wife are equal shareholders of B, a law firm. You have entered into a contract with B negotiated by F on your behalf to receive a total of v hours of legal services annually from B. You wrote that because F has had prior experience in negotiating fees with attorneys, negotiated your contract with B at Arm's Length. F used its professional contacts to determine the appropriate fair market value fee based on experience. The contract was signed by the governing body members of F, as well as by C and D on behalf of B, as well as by C on your behalf. It was signed on date J.

The services B is providing to you consist of:

- Lead counsel responsibilities (Individual C). This includes determining client selections with F, developing pro bono liaison with lawyers and law firms for national work, developing and delivering training for attorneys interested in providing assistance on your behalf, developing and delivering legal assistance and education programs for G.
- Serving as your administrative director (Individual D); this includes preparing an employee handbook, preparing and administering your budget, monitoring pro bono cases, file maintenance, conflicts checks for any potential client or case, writing annual performance reviews for all your employees, reporting the status of your budget to F's Executive Director and your Board of Directors on a monthly basis.
- Heading your criminal division, (Individual C); this includes acting as Criminal Division Servicer Lead or supervising counsel for all criminal, appellate, and habeas corpus cases that you accept; C will also develop a network of pro-bono attorneys for witness representation.
- Serving as Staff Attorney for Criminal and Immigration (Individual D); this involves serving as staff counsel on criminal and immigration cases you accept. If time permits, legal assistance will be provided to individuals seeking assistance with removal from no-fly lists and special security measures.

Under the terms of the agreement you must furnish B the following:

- Professional liability insurance for C and D, for w dollars.
- Reimburse B for annual H Bar Association fees, dues and the minimum required for continuing legal education costs for membership in the state bar.
- Assume B's copiers/printers and Lexus contracts if transferable.

- Provide B fully functional and equipped legal offices including office space, conference rooms, secretarial and staff lawyers, etc.

The contract shows you have provided z dollars to B to relocate the law practice to H, to pay for B's early lease termination, website termination, moving expenses, temporary living expenses, the H bar application fee for both C and D and relocation travel for D.

The contract indicates that the compensation B receives is for exclusive legal services. You stated that your activities will compose 99% of B's business. The contract also specifies the amounts you are to pay B annually for its services which will increase each year for the cost of living as well as for increases in its duties as your scope of work and caseloads expand.

The contract further indicates the parties agree to a five year contract term. The first two years of the contractual period is non-cancellable by either part except for cause. If you terminate the contract after two years but less than three years, then x dollars must be paid to B. If the contract is cancelled after three years but less than four years, then y dollars is paid to B. If you cancel the contract with B after four years, then you pay z dollars.

The contract also specifies the paid vacation time that C and D will receive annually (20 business days as well as ten business days for bereavement and sick leave as well as nine holidays). In addition to the annual paid leave, they were also both entitled to 15 days of leave to relocate to H.

Besides C and D, you have one other director, E who is a lawyer that helped with your formation. He is being reimbursed for his services as outside corporate co-counsel, which you stated is about 20% less than his normal fees.

Article IV of your bylaws concerning your directors specifically reads:

- The Members of the initial Board of Directors shall be designated and appointed by F.
- The number of Members of the Board of Directors shall not be less than three (3) and not more than six (6).
- The Members of the Board of Directors following the appointment of the initial Board of Directors shall be designated and appointed by F.
- All Members of the Board of Directors shall be duly licensed to practice law in the State of H or duly licensed to practice law in another jurisdiction but with at least one (1) Board Member being a duly licensed attorney to practice law in the State of H.
- No more than two (2) persons serving on the Board of Directors may be "interested persons." An interested person is (a) any person compensated by the Corporation for services rendered to it within the previous twelve (12) months, whether as a full time or part time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director as director; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. However, any violation of this Paragraph shall not affect the validity or enforceability of transactions entered into by the Corporation.

Moreover, you provided minutes from your organizational meeting and first meeting of your directors held about four months after your formation. C and D were present and E was present telephonically. C was appointed Chairman and D acted as Secretary of the meeting. The minutes read:

The Chairman stated that nominations were in order for the election of directors of the corporation to hold office until the first Annual Meeting of Directors and until their successors shall be elected and shall qualify. The following persons were named: C, D and E. D is the president and treasurer, while C was nominated for the vice president and the treasurer.

Your activities are funded by grants from private foundations and public charities, including F. About 30% of your annual expenditures are for salaries and wages. Approximately 40% of your revenues will be expended for professional fees.

Law

Section 501(c)(3) of the Internal Revenue Code ("Code") provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational, and scientific purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("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)(2) of the regulations provides 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 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.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the presence of a single nonexempt purpose, if substantial in nature, will preclude tax exemption under section 501(c)(3) of the Code.

In Est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over Est of Hawaii, a nonprofit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an "instrument" to further their for-profit purposes. Neither the fact that the for-profits lacked structural control over the organization nor the fact that amounts paid to the for-profit organizations under the contracts were reasonable affected the court's conclusion that the organization did not qualify as an organization described in section 501(c)(3) of the Code.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the organization's founder and his wife executed vows of poverty and transferred all their possessions and income to the organization on the condition that it qualified under IRC 501(c)(3). The founder controlled all financial decisions of the organization. The court found that a substantial purpose of the organization was to serve the private interests of the founder and his wife. Accordingly, the court held that the organization did not qualify under IRC 501(c)(3).

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar (a for-profit enterprise) for purposes of raising money for scholarships. The board of directors included the bar's owners and accountant, and two other persons. The court reasoned that, because the bar owners controlled the organization and appointed its directors, the organization's fundraising activities could be used to the advantage of the bar owners, and thus, provide them with a maximum private benefit. The organization claimed that it was independent because there was a separate accounting and that no payments were going to the bar. The court maintained that the organization's and the bar's activities were so interrelated as to be "functionally inseparable." A separate accounting did not change that fact. Thus, the organization did not operate exclusively for exempt purposes, but rather benefited private interests -the bar owners. Exemption was properly denied.

In Church by Mail, Inc. v. Commissioner (1985), the Court affirmed a Tax Court decision (T.C. 1984-349). Church by Mail sent out sermons in numerous mailings. This required a great deal of printing services. Twentieth Century Advertising Agency provided the printing and mailing. Twentieth Century was controlled by the same ministers. It also employed family members. The services were provided under two contracts. The contracts were signed by the two ministers for both Church by Mail and Twentieth Century. Church by Mail business comprised two-thirds of the business of Twentieth Century. In deciding for the government, the Court made the following statement: "There is ample evidence in the record to support the Tax Court's finding that the Church was operated for the substantial non-exempt purpose of providing a market for Twentieth's services."

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a nonprofit corporation that conducted continuing medical education tours. The petitioner had three trustees: Mr. Helin, who was a shareholder and the president of H & C Tours, a for profit travel agency, Mr. Regan, an attorney, and a third director, who was ill and did not participate. Mr. Helin served as executive director. The petitioner used H & C Tours exclusively for all travel arrangements. There is no evidence that the petitioner ever sought a competitive bid. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that: "When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively within the meaning of section 501(c)(3), even if it furthers other exempt purposes." The court found that a substantial purpose of the applicant's operations was to increase the income of H&C Tours. H&C Tours benefits from the distribution and production of brochures which solicit customers for tours arranged by H&C Tours.

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 the operational test.

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 the majority of your board members have an interest in B with whom you have a comprehensive contract. You have adopted a conflict of interest policy and stated that F an unrelated tax exempt organization negotiated the contract with B at arm's length; however, this does not change the fact that two of three of your board members are profiting from your relationship with B.

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 B. This is evidenced by the following terms in your contract with B:

- You are paying B's relocation expenses.
- You are assuming B's copiers/printer and Lexus contracts if transferable.
- You are providing B fully functional and equipped legal offices including office space, conference rooms, secretarial and staff lawyers etc.

In addition, the fact that you are B's only client shows you are operating to benefit B.

Moreover, you are not 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 C and D as evidenced by the following:

- The compensation package for C and D.
- Professional liability insurance for C and D, for w dollars.
- Personal relocation expenses and personal travel expenses.

You are like the organization in Better Business Bureau v. Commissioner. Although you may have some charitable purposes, the presence of the non-exempt purposes of providing the benefit of tax-exempt status to B and operating for the private interests of C and D precludes exemption.

You are similar to the organization in est of Hawaii v. Commissioner because you are primarily dependent on one for-profit, B for your operations. You have a comprehensive contract with B. The contract states C on behalf of B is leading your criminal division as well as acting as your Staff Attorney for Criminal and Immigration. In addition D on B's behalf is serving as your administrative director which includes determining client selections with F. Consequently, B has considerable influence over your operations. You are unable to remove yourself from B because your public interest law firm could not operate without B. Without B, you have no function.

You are similar to the organization described in International Postgraduate Medical Foundation. Your founder and his wife are in positions of control and are co-owners of the for-profit law firm, B. B 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.

You are also similar to the organization described in P.L.L Scholarship Fund. Your operations and management are so interrelated with B that you are functionally inseparable from B because without you, B would not be operational. Therefore, you operate for the substantial private benefit of C and D and their law firm, B.

You are comparable to the organization in Church by Mail because you and B are substantially controlled by the same persons. Two out of three board members are in position of control and own 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.

Moreover, B benefits substantially from your operations. You have provided a market for B's law services.

Your position

You stated that your principal present activity is to provide legal representation and assistance by your licensed lawyers, employees or independent contractors for criminal, civil, appellate, habeas corpus and immigration proceeds for G individuals and to promote and develop the civil rights and constitutional rights of G individuals and to eliminate prejudice and discrimination of G individuals in America and lastly, to provide legal assistance and representation to G organizations and individuals regarding compliance with trade regulations established by the Treasury department or other federal criminal statutes for charitable activities.

Our response to your position

You failed to provide any additional information from which it can be concluded that you are operating exclusively for 501(c)(3) purposes. Your net earnings are inuring to the benefit of your directors as described in the preceding facts and analysis and you are serving substantial private interests rather than public interests. This precludes exemption under Section 501(c)(3).

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 purposes within the meaning of section 501(c)(3) of the Code because you operate for the private benefit of B and your earnings are inuring to C and D. Any charitable purpose is incidental to these private purposes.

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