



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201701020**
Release Date: 1/6/2017

Date: October 12, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-05, 501.31-00
501.33-00, 501.35-00,
501.36-00

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: August 15, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Member
C = Organization
D = LLC
E = LLC
J = District
K = State
L = Date
M = Date
N = Date
O = Date
P = Date
Q = Date
R = Date

UIL:

501.03-05
501.31-00
501.33-00
501.35-00
501.36-00

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

1. Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.
2. Do you qualify as a public charity described in section 509(a)(2) of the Code? No, for the reasons stated below.

Facts

You were formed as a limited liability company with J on date L. You were also registered as a foreign limited liability company with state K on date M. You registered a trade name, E, with J on date R.

Your amended organizing documents filed with the state K stated that your purposes are exclusively charitable, religious, educational, and scientific purposes ... "Your past, present and future activities are to

manage the internal affairs of all held companies from a non-commercial perspective and to track all donated inventory "STOCK" to retail markets, per point of purchase that tenders receipts, or evidence(s) of money to offset any alleged tax liabilities. Retail outlets carrying donated stocks shall be responsible for charging the appropriate state tax fees on all consumed stock(s) or retail merchandise; thus, providing collateral on the public's debt or public's money."

Your amended organizing document further stated that there shall be no commercial activities of you and of any of the companies that you hold and manage, nor any mandatory interest reporting requirements of all tax free income to the Internal Revenue Service. You shall generate "PROFITS", but by non-commercial means, adopting "insurance" on internal stocks through privately held and managed companies by you. This is also called "Special Licensing Arrangement".

You filed a two-year report for domestic and foreign filing entity with J stating that your business affairs conducted in J are "international finance business".

Your Form 1023 application stated that you re-applied for the 501(c)(3) tax exempt status of C. C was formed as a non-profit public benefit corporation with state K on date N. C was granted exemption from federal income tax on date O as an organization described in section 501(c)(3) of the Internal Revenue Code. On date P, C converted out from state K to an unlicensed for-profit foreign LLC under the law of J. C registered with state K on date Q as a foreign business trust with the new name, D.

Your Form 1023 application also stated that you continue your tax exempt status because of your relationship with C, despite C not being directly named in your organizing document. You stated you should be exempt because of the exempt status and the dual status of your existence in J and in state K and your affiliation with C. B is your sole member and principal director of C, now called D.

You stated in your response to our additional information letter that your activities are to manage the internal affairs of all held companies from a non-commercial perspective and to track all donated inventory "STOCK" to retail markets, per point of purchase that tenders receipts, or evidence(s) of money to offset any alleged tax liabilities. Retail outlets carrying donated stocks shall be responsible for charging the appropriate state tax fees on all consumed stock(s) or retail merchandise; thus, providing collateral on the public's debt or public's money.

You also stated that there shall be no commercial activities of you and of any of the companies that you hold and manage, nor any mandatory interest reporting requirements of all tax free income to the Internal Revenue Service. You shall generate "PROFITS", but by non-commercial means, adopting "insurance" on internal stocks through privately held and managed companies by you. This is also called Special Licensing Agreement.

You later stated that E, your related organization, may issue checks directly to public vendors in the exchange of good and services.

We asked you to clarify the activities you claimed were non-commercial activities. You submitted some other information such as a Certificate of Trade Name and a copy of your Registration of a Foreign Limited Liability Company. These documents did not directly answer the additional information requested. You later submitted a response which has a big X crossed over our additional information letter and stated that "By drawing as "X" across questions 1-7 of the Penalty of Perjury form will VOID that particular contract(s) from the IRS for additional information, making the represented information prevalent in establishing a privatized exemption."

Your proposed budgets for all years are zero. You stated that the reason for zero balance was due to no public or commercial activities to be conducted by you or from any companies held and managed by “Special Licensing Arrangement”. Therefore, providing this type of “hedge” of “insurance” protection of the public’s debt or the public’s money does not require a thorough explanation of the revenue and expenses. Performing in the capacity of a Pure Trust with no liability incurred by and through public commercial activity allows for all internal expenses to be underwritten or prepaid against its own money credit system. Therefore, all donated inventory “STOCK” will generate pure “PROFIT” with no overhead costs. No other fees based on gross annual receipts are to be remitted to the Department of Treasury.

You have requested classification a public charity described in IRC section 509(a)(2).

Law

Internal Revenue Code (IRC) section 501(c)(3) exempts from federal income tax corporations, and any community chest, fund, or foundation, organized and operated exclusively for, charitable, scientific, or testing for public safety, among other purposes. It expressly forbids the inurement of net earnings to the benefit of a private shareholder or individual.

IRC section 509(a)(2)(A)(i) defines an organization which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees.

IRC section 509(a)(2)(A)(ii) defines an organization which normally receives more than one-third of its support in each taxable year from any combination of gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity which is not an unrelated trade or business (within the meaning of section 513).

IRC sections 509(a)(2)(B)(i) and (ii) define an organization which normally receives not more than one-third of its support in each taxable year from the sum of gross investment income and the excess (if any) of the amount of the unrelated business taxable income (as defined in section 512) over the amount of the tax imposed by section 511.

Treasury Regulation Section 1.501(c)(3)–1(a)(1) provides that an organization that fails either the organizational test or the operational test is not exempt under Section 501(c)(3) of the Code.

Treas. Reg. Section 1.501(c)(3)–1(c)(1) provides that an organization is operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in Section 501(c)(3) of the Code. It is not so operated if more than an insubstantial part of its activities do not further those purposes.

Treas. Reg. Section 1.501(c)(3)–1(c)(2) provides that an organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private individuals.

Treas. Reg. Section 1.501(c)(3)–1(d)(1)(ii) states that to be charitable, an organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated for the benefit of 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. The private benefit restriction is not limited to benefits provided to insiders. Rather, the restriction applies to benefits provided to

any individual, whether or not the individual is in a position to control or influence the organization. The private benefit restriction operates against all parties who receive a benefit not accorded the public as a whole.

Section 4.01 of Rev. Proc. 2016-5 states that “a favorable determination letter or ruling will be issued to an organization if its application, including attestations and supporting documents, establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.”

Section 4.03 of Rev. Proc. 2016-5 states that “exempt status may be recognized in advance of the organization’s operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed.” Additionally, “where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter.”

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3) if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. See Better Business Bureau of Washington, D. C., Inc. v. United States, 326 U.S. 279 (1945) which held activities that were in part aimed at promoting the prosperity and standing of the business community were held to serve a substantial non-exempt purpose.

In Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958), the court held that an applicant for tax exempt status under section 501(c)(3) has the burden of showing it “comes squarely within the terms of the laws conferring the benefit sought.”

In American Science Foundation v. Commissioner, T.C. Memo 1986-556, the Court held that an organization was not eligible for exemption because it failed to provide sufficient information to permit the conclusion that its activities would be exclusively in furtherance of exempt purposes.

In The Church of the Living Tree v. Commissioner, T.C. Memo 1996-291 (1996), the Tax Court upheld the Service’s determination that the organization, whose secondary purpose was promotion of the (hand) papermaking industry, was not described in IRC 501(c)(3). The organization also provided rent-free facilities to the founder, although the founder received no compensation for his work with the organization. The Service had determined that promotion of the papermaking industry was a substantial non-exempt purpose and that the organization provided private benefit to the founder. The court ruled that the organization had not carried its burden of proof to show the Service’s determination was erroneous.

Application of law

You are formed as a limited liability company with a sole member, B. As a result your net earnings are set to inure to the private individual, B. Since B is your sole member, B’s entitlement to any part of your assets or income constitutes inurement prohibited under IRC Section 501(c)(3). Because your organizing documents are structured in this manner you do not meet the organizational test and also, because you are operating for commercial purposes and in furtherance of private, rather than public, purposes; you do not meet the operational test (Treas. Reg. Section 1.501(c)(3)-1(a)(1)) and therefore do not qualify for exemption under IRC Section 501(c)(3).

You do not, therefore, meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you serve private interests, namely, the business interests of financial transactions of the distribution of credit as “debt” or liability insurance.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial amount of your activities are furthering non-exempt purposes. Your operations benefit private parties, namely, private businesses or creditors. You are similar to the organization in Better Business Bureau of Washington, D. C., Inc. v. United States, in that you have a substantial purpose to help you and your related business entities and creditors to become tax free entities, an activity which is not in furtherance of any exempt purpose within the meaning of IRC Section 501(c)(3).

In accordance with Treas. Reg. Section 1.501(c)(3)-1(c)(2), you are not operated exclusively for exempt purposes because your net earnings inure to the benefit of private individuals. You are conducting business transactions as a for-profit business and to ensure you, your related for-profit businesses and your creditors are not liable for taxes. See The Church of the Living Tree v. Commissioner.

You do not provide sufficient documentation that can support you conduct or plan to conduct activities described in section 501(c)(3) as stated in Nelson v. Commissioner. See also in sections 4.01 and 4.03 of Rev. Proc. 2016-5 and American Science Foundation v. Commissioner.

You also do not qualify as a public charity described in IRC Section 509(a)(2) because you do not meet the public support test as defined in IRC Sections 509(a)(2)(A)(i), 509(a)(2)(A)(ii), 509(a)(2)(B)(i), and 509(a)(2)(B)(ii) because you have and will always have zero balance.

Your position

You state because you carry a zero balance account, therefore, you should be granted exemption under IRC Section 501(c)(3). You did not state why you would qualify as a public charity described in IRC Section 509(a)(2).

Our response to your position

Your activities promote business transactions of credits, debt or liability insurance to each privately held and managed company of the Special Licensing Arrangement between you and related entities. Nothing in your application described charitable or educational activities, only why you should not be liable for tax provisions.

You were also formed as a limited liability company with members. You are not formed as a non-profit public benefit corporation. The direct and primary beneficiaries would be the businesses and/or members of your organization and your related business entities. For this reason, you are more than insubstantially serving private interests. The existence of one non-charitable purpose that is substantial in nature is cause for denial of exemption. Furthermore, an organization will not qualify for exemption if it is operated for a mixture of exempt and non-exempt purposes. You are only operating for non-exempt purposes.

In addition, C (or now D) no longer has a legal standing for exemption since it converted out from a non-profit public benefit corporation incorporated in state K. C is no longer in existence as a corporation in state K. In fact, C's status is “dead” with state K. C is also auto-revoked by the Internal Revenue Services for not filing Form 990s for 3 consecutive years. Exempt status may not be transferred to another corporation, especially to the “dead” corporation; therefore, you will not be granted exemption through the reinstatement of tax exemption of C.

You also do not qualify as a public charity described in IRC Section 509(a)(2) because you do not have public support. You have a zero balance which means zero public support income.

Conclusion

You do not qualify for exemption under IRC Section 501(c)(3) because you conduct commercial activities and serve private rather than public interests. More than an insubstantial part of your activities are in furtherance of non-exempt purposes and your net earnings inure to the benefit of private individuals.

You do not qualify as a public charity described in IRC Section 509(a)(2) because you do not receive any public support. Your income is zero and will always be zero.

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.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892