



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201710036**  
Release Date: 3/10/2017  
UIL Code: 501.00-00  
501.31-00

Date: DECEMBER 13, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

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: OCTOBER 13, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = State

C = Date of formation

D = Website

E = Founder

**UIL:**

501.00-00

501.31-00

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 formed by Articles of Incorporation in the State of B on C. Your Articles state, in part, that you were formed to:

Provide education, information, and technical assistance to the public and private organizations in business, science, and technology projects designed for the benefit of the general public; in furtherance of the purposes of the corporation, to establish and foster beneficial and cooperative linkages and partnerships in the areas of business, science, and technology and provide consultation, evaluation, assistance and advice to such public and private organizations for the benefit of the general public. In furtherance of the purposes the corporation, to seek and obtain grants, bequests, gifts, and endowments from any source including, but not limited to, local, state, and federal sources and other public and private organizations, groups, or individuals.

You amended the stated purpose in your Articles of Incorporation, as follows, in part:

The corporation indicates the following services will provided as projects: Charitable, educational, scientific, literary, different projects such as for example, the of construction, renewable energy,

innovation or technology, or others projects, working in the areas of: (i) charitable, education projects, projects designed for the benefit of the general public, and defined by the corporation. (2) Projects, defined by the corporation. This is a professional corporation, as a projects developer, the founder, engineer with postgraduate on business administration and experience of twenty years. The corporate will work in or with: (a) charitable, education projects, projects designed for the benefit of the general public, and defined by the corporation. (b) The corporation not will work of no way: in political and religion. (c) Impart education in different areas as science, technology, business and other specialties. (d) Research projects, on different areas. (e) Special projects, in different areas, projects designed and too for the benefit of the general public, defined by the corporation. (f) Other countries, and too for benefit of general public, defined by the corporation. (g) Other people from other countries, for the benefit of general public, defined by the corporation. (h) A project manager for each project, for the benefit of general public, defined by the corporation. (i) Each project managers, will work with a contract for each project, according all related and applicable laws.

Your stated purpose is as follows:

The corporation, designs, develops and manages projects, whether for the benefit or [sic] the general public or for a given activity, science, literary, education or any other project, and the projects funding, will be the public fundraising. Through the design of a project, which for example, can be educational, a community or a segment of a community, it can be a segment of small business, to educate them on project concepts or other concept, with a free education, the corporation will provide educational scholarships to participants for each course or seminar.

You indicated you have a scholarship program. You described the activity as designing courses or seminars specific to a particular group of people, or for a certain sector of the population, in order to provide education or training to help this group of people improve, either at work or in their daily lives. You said, "Everything will start in the search for this group of people and in the design of the module, seminar or course, which is to be implemented in line with the goals and objectives that the working group will be prepared."

For the first step of this program you "will work to enhance group, of small businesses, to incorporate them such concepts in the area of project or others, related to their best business productivity." You said "each design seminar or course, is a time of preparation, in relation to the working group, where this is to be implemented, either, by differences in education and others, we must also prepare supporting material and necessary to each member of the seminars or courses, to achieve the knowledge and experience reach, which is being delivered."

We asked for a more detailed description of your activities, including what specific activities you conduct. You responded that you are "an organization of cooperation, through support in the preparation of projects, both these, as charitable, education, scientific, technological, It may be another, which has no relation to: -politics, religion, terrorism, weapons, defense projects, drugs, or violence of any kind." When we asked who participates in the activities, you said "the company which needs our cooperation and the corporation." We asked where you conduct your activities and you said, "Defined by each project." We asked when or how often the activities occur and you said, "This is a new corporation, the corporation needs time to have a good story." We asked what fees, if any, are charged and how you determine them. You said "All cost and expenses necessary, defined in each project." When asked what percentage of your time and resources you spend on your activities you said, "The required for each project, defined in each project."

Because your response provided no substantive information regarding your activities, we asked for more clarification. You provided the following:

[You are] not devoted to politics, not dedicated to religion, not dedicated to terrorism, it is not dedicated to the drug, not dedicated to arms, only this dedicated to: design projects that create progress to a community-on work performed, as cooperation to promote development in a particular area, this is a job that is needed; education, experience, knowledge and feeling. In a first stage, it is expected to work in education projects, but for as it could be work in the areas that are proposed, the same education, science and technology. The design of a project, is clearly focused on seeking deliver value to society as a whole. It is important for [you], the request that is requesting the extension of 501(c)(3) because it's the beginning of his work.

In addition, I wish to express a complaint about D company, which in internet has put his propaganda about [you], attributing this corporation information that is damaging, since there are no grounds that they legally can assign as crimes on the Corporation and responsible, considering this as a great arrogance on the laws and the IRS, for its operation, I respectfully request the causal process on the cause. [You], has not authorized the company D, attributed rights, is not theirs by law, I respectfully request its closure for ever [sic], where the law of origin and compliance on the powers that have been granted by the IRS, they are transgressed. However, his knowledge and the benefit you want to integrate the community [you] is very different.

Due to the ambiguity of your prior responses, we again solicited a more detailed description of activities. You provided the following:

[You] seeks to design projects according to the requirements of each prospect. They are assessed and analyzed the requirements and then work on them, to find the best design that achieves and seek the solution to a particular requirement. This can be in the field of education, science, business and technology. They are like tailored suits, each company or organization; you may have different requirements and different approaches. In the design process, we must work on the information you have, the more information is researched, it is a sometimes long process to get each client to achieve the required design, as this involves many hours, prior to the same final design.

Our corporation income needed to create this activity, where we thought that one way legitimate, legal and honorable, is to resort to the contribution of companies to develop our business. Our Corporation has no connection with religion and not with politics.

This is a new organization, where the founder, E, is a professional with 20 years of experience in the area of projects and related technology, in addition to their other skills in various other business areas, which has been achieved through a self-training, knowledge such as macroeconomics, industry and science.

A estimate problemc [sic] I was delivered, or perhaps not attainable, this greatly depending on the authorization of the IRS. It is not intended to be more than it is, an organization that aims to develop design-projects through, knowledge and experience.

Creativity, is developed as a process that requires education, knowledge, experience and research, and this is [you]. It is a new business, that needs time to revenue, and is hoping that the IRS, the authorize [sic] the requirement necessary, to start the begin working.

You have one governing body member, E. E is your founder and President. You indicated that there would be compensation of your officers, directors of trustees. In your first year of operations you anticipate that more than 75% of your revenue would be expended for compensation of your officers, directors, and trustees with the remainder expended for occupancy. As you only have one governing body member, E, it can be assumed that E will be receiving all of the compensation. The following two years include over 70% of your revenue each year expended for compensation with the remainder spent on occupancy. There are no other expenses included in your financial projections. You will apply for funding for project through the internet.

You also described the role of your project managers. You said, "For each project manager, whom, will be responsible for managing the action, to develop the project in a professional manner, and then be sought for these projects, applicants will be hired to, fulfill the conditions, moral and intellectual, to develop each project."

### **Law**

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) 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.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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.

Rev. Proc. 2016-5, 2016-1 I.R.B. 188, provides that the Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption is claimed. Section 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

1. The applicant is responsible for the accuracy of any factual representations contained in the application.
2. Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.
3. The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Section 4.03 of the Rev. Proc. states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying

out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. It further states 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.

Levy Family Tribe Foundation, Inc. v. Commissioner, 69 T.C. 615 (1978), provides that an applicant for exemption carries the burden to sufficiently describe its activities in order to meet the operational test of Section 501(c)(3) of the Code. The court states, “[N]owhere in the administrative record is there any description or explanation of how this activity furthers an exempt purpose. The record is replete with unsupported generalizations. These explanations are too general and lack the facts necessary to establish public, rather than personal, purposes of the organization.”

Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), provides that an application for tax-exempt status “calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws.” Further, in the absence of such disclosure, “the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of [Section] 501(c)(3).”

In Basic Unit Ministry of Alma Karl Schurig v. Commissioner, 511 F. Supp. 166 (D.D.C. 1981), affd, 670 F.2d 1210 (D.C. Cir. 1982), the court upheld the IRS's denial of exempt status as a religious organization in a declaratory judgment action. The court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Here plaintiff did not proffer sufficiently detailed evidence of its charitable disbursements, or the extent of its support of its members. Rather, plaintiff continually responded that it had already provided the data, or could not furnish anything further. Therefore, the court found that the applicant did not meet its burden to positively demonstrate that it qualifies for the exemption. The Court of Appeals for the District of Columbia Circuit, in affirming that the organization had not met its burden of establishing that no part of its net earnings inured to any private individual, observed:

“taxpayer confuses a criminal prosecution, in which the government carries the burden of establishing the defendant's guilt, with a suit seeking a declaratory judgment that plaintiff is entitled to tax-exempt status, in which the taxpayer, whether a church or an enterprise of another character, bears the burden of establishing that it qualifies for exemption.”

In Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004), the court upheld the Service's determination that the organization failed to establish exemption where the organization fails to provide requested information, stating, “[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities. Such generalizations do not satisfy us that [applicant] qualifies for the exemption.”

In New Dynamics Foundation v. United States, 70 Fed. Cl. 782, 798 (Fed. Cl. 2006), the U.S. Court of Federal Claims held that the Service properly denied tax exempt status under Section 501(c)(3) to a nonprofit corporation that was organized to promote and contribute to charitable causes. In reaching this conclusion, the court stated, “It is well-accepted that, in initial qualification cases [any] gaps in the administrative record are resolved against the applicant,” adding that courts “can draw inferences adverse to a taxpayer seeking exempt

status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive.”

### **Application of law**

An organization must provide a clear description of their activities in order for a determination to be made that they are operated exclusively for one or more exempt purposes as described in Section 501(c)(3) of the Code. You have not described your activities clearly or unambiguously and, consequently, we are unable to conclude that you meet the requirements of Section 501(c)(3).

You have failed to establish that you are operated exclusively for charitable purposes as required by Treas. Reg. Section 1.501(c)(3)-1(a)(1). You indicated that you will develop design projects, but provided very little information regarding these projects. You will initially work with small businesses, as it relates to their productivity. Developing design projects for businesses is not, in and of itself, a charitable or educational activity. You have not substantiated that you engage primarily in activities that accomplish one or more exempt purposes specified in Section 501(c)(3) of the Code as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). Therefore, you are not exempt.

Rev. Proc. 2016-5 provides that an organization seeking exemption must fully describe all activities including standards, criteria, and procedures. After the submission of your Form 1023, you were asked multiple times to provide a written description of your past, current, and planned activities and you provided only vague responses. Moreover, you do not meet the requirements of Sections 4.03 and 4.03(2) of Rev. Proc. 2016-5 because you provided the same generalities each time we requested more details. Based solely on the administrative record, we do not have sufficient information to determine whether your future activities will fulfill exclusively charitable or educational purposes. Therefore, you have not met your burden as described in Rev. Proc. 2016-5.

An organization has the burden of proof to describe its activities in sufficient detail to permit the Service to determine whether it meets the definition of the Code section under which exemption is sought. The courts have ruled against applicants for tax exemption when the applicant's proposed activities are especially ambiguous. See Levy Family Tribe Foundation, Inc. v. Commissioner. You were not able to provide pertinent details about your activities. Further, where an organization provides mere generalizations in response to repeated requests by the Service for more detail on prospective activities, the courts have ruled against the applicant for exemption when such generalizations fail to show applicant qualifies for exemption. Peoples Prize v. Commissioner. An application for tax-exempt status calls for open and candid disclosure of all pertinent facts, as described in Bubbling Well Church of Universal Love, Inc. v. Commissioner. You have been neither open nor candid in your responses.

Additionally, you only have one governing body member, E, who is compensated. E has sole oversight and authority over you, creating the potential for abuse. Like the organization described in Basic Unit Ministry of Alma Karl Schurig v. Commissioner, the court held that in factual situations where there is evident potential for abuse of the exemption provision, a petitioner must openly disclose all facts bearing on the operation and finances of its organization. Despite repeated attempts to gather details regarding your operations, you have not openly disclosed all facts, which prevents you from meeting your burden of positively demonstrating that you qualify for exemption under Section 501(c)(3) of the Code.

As stated in New Dynamics Foundation v. United States, “It is well-accepted that, in initial qualification cases... gaps in the administrative record are resolved against the applicant,” adding that courts “can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its



operations, or where the evidence is vague or inconclusive.” Thus, your failure to provide clear and conclusive documentation concerning your operations, leads us to infer that you are not operating for an exempt purpose under Section 501(c)(3) of the Code.

### **Conclusion**

Based on our analysis of the information you provided in connection with your application, we have determined that you are not operated exclusively for charitable or educational purposes within the meaning of Section 501(c)(3) of the Code. Accordingly, you are not exempt under Section 501(c)(3).

### **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