



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

Release Number: 201712017
Release Date: 3/24/2017

Date:
December 16, 2016
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-30, 501.36-01

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.

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

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 28, 2016
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = date
C = state
D = organization
e dollars = dollar amount
f dollars = dollar amount
G = issue group
H = group

UIL:
501.03-30
501.36-01

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 IRC 501(c)(3)? No, for the reasons indicated below.

Facts

You were incorporated on B in C as a non-profit corporation. Your articles of incorporation state you are organized exclusively for educational and charitable purposes within the meaning of section 501(c)(3). Further, you are primarily organized to:

conduct and distribute research, studies, and analysis relating to environmental, social, and economic issues; and develop policy solutions and proposals to address environmental, social, and economic issues, including, but not limited to, air and water pollution, toxic waste generation and disposal, pesticide and herbicide use, home and workplace hazards, and soil degradation.

On Form 1023, you indicate two main areas of activities, research and public education. Research includes projects on specific economic problems and threats, addressing those issues effecting people in the community. Your board approves the topics, such as energy production, agriculture and industrial depletion. Initially you will focus on government waste and fraud. Information gathered from this research is incorporated into written materials accessible to the public, announced to the press. You expect any publications to be written with a view

towards exploring a broad range of approaches and solutions to those topics. Your educational component includes disseminating information from your research, including a newsletter. You will sponsor workshops and forums on issues to increase understanding and knowledge, with emphasis placed on issues of interest to specific populations. For example, you will seek debate on economic issues important to family farms and on governmental waste in rural communities. Fees for publications and information, if any, would be nominal.

You also indicated per the Form 1023 that you may conduct lobbying. You have elected measurement of these activities through expenditures by Form 5768.

You have a close connection with D. You have stated D is exempt under IRC 501(c)(4), however, this information could not be verified and no further details on D were provided. You and D will share facilities, staff and office equipment. You indicated this was allocated on a reasonable basis, and referred to an agreement for allocation of cost and reimbursement of expenses. A copy of this agreement was not provided. You also stated you would provide grants to D for certain educational activities, however, no expenses were budgeted for distributions. D would submit proposals requesting funds. One of your directors also serves as a director for D. When asked, you provided no additional details regarding your activities with D.

Despite repeated requests, no officer or director signed Page 12 of your Form 1023, declaring authority under penalties of perjury on the correctness and completeness of information contained within your application.

As part of an additional information request, we provided you with copies of information from your web site, and asked you to confirm that the information was actually from your site. Although you did not submit a response, you submitted multiple requests for extensions of time to respond, as well as letters requesting approval of your application. None of your submissions denied that these pages were from your web site or questioned the authenticity of the information we found on your web site.

Pages from your web site included information for “everything you need for your 501(c)(3) non-profit branch”, which explained how becoming one of your branches was easy. On what appears to be the web sites home or launch page, there were various links and information. There was a link to your branch affiliation agreement. There were costs, such as a one-time setup fee of e dollars and an annual maintenance fee of f dollars. You indicated that you would do all the tax filings, and although you and your affiliates would all be branches of the same entity, groups would be independent members. You also urged potential groups to go and build their group to get the country back on track, followed by a ‘laundry list’ of tips and tricks.

On your “About Us” page, you describe yourself as an affiliate, the mission of which is to promote voter education in a 360 degree environment. You aim to build a working knowledge of government and promote the study of founding documents through volunteers operating as citizen lobbyists. You go on to state that you are not a separate organization, but rather an underlying framework feeding the purpose begun by H that allows groups who choose to organize the ability to raise funds and secure meeting space. You state that schools and churches often view you as “too political”, and that by organizing as a non-profit it helps break down those pre-conceived ideas. Your web site indicated by forming in this manner it gives your branches the ability to set up necessary bank accounts and insurances to prepare for the long haul.

You go on to state you are using a franchise model, and that it is time G Americans had a place in this fabric. The model is being used in “franchise” fashion to expand the footprint of this movement rapidly. Your movement must outlast troubled times in which you are the silent majority, and without an active body of

citizens it is impossible to expect government to remain on track. You are forming a “republic insurance” that should last.

Your branch affiliation agreement referred to a potential branch member as an association desiring to be one of your divisions. A branch would abide by and promote your purposes and objectives as set forth in your Articles and Bylaws. A branch would plan, promote and produce events beneficial to you and expansion/coverage within their area. The branch agreement outlines the above referenced fees. You would require accounting from a branch, and provide them with a federal employment identification number.

A link that followed this information was titled “G Political Activism Begins Outside the Box”. This included a ten-point program, outlining steps to creating, structuring and operating an organization. It includes a primer for successful start-up and maintenance of a group, such as conducting meetings, housekeeping and administrative type items common to most organizations. However, it also contains items such as, “Action – activity vs accomplishment”, which outlines engaging local citizens as often as you can. Within the action category you listed varying points such as:

- becoming the place for political action, ideas, education and camaraderie
- host debates and have candidates ask each other questions
- find ways to help educate voters
- work with established groups if you do not have expertise
- always play to win – look for opportunities to garner even small victories, such as city councils, board of sups, school boards, etc. You have much more influence at that level
- open channels of communication with the city council, board of supervisors, congressman, state assemblyman/senator – help them if you can before you criticize, build the bridge

You give suggestions for problem areas, to keep an eye out for spies, and for people to network with, support and communicate. You offer to beware of faux committees that are not about action, to add action groups all the time, and asks how do you start them, run them and where do you get ideas from.

Law

Section 501(c)(3) of the Code provides that organizations organized and operated exclusively for charitable, religious or educational purposes will be exempt from federal income tax if no part of its net earnings inures to the benefit of any private shareholder or individual, no part of its activities is carrying on propaganda, or otherwise attempting, to influence legislation (except as provided in 501(h)), and it does not participate in, or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more 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 is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c)(3) An organization is not operated exclusively for one or more exempt purposes if it is an *action* organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(iii) An organization is an *action* organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Rev. Rul. 2007-41, 2007-41 C.B. 1421, analyzes 21 situations to determine whether the organization described in each has directly or indirectly participated in a political campaign on behalf of or in opposition to a candidate for public office. All facts and circumstances are considered when making this determination. When determining whether a communication results in political campaign intervention, key factors include:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election;
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

Rev. Proc. 2016-5, 2016-1 I.R.B. 188, Section 4, provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it was primarily engaged in an activity that

was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax court Stated:

We must agree with the Commissioner that petitioner's activities constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that "one seeking a tax exemption has the burden of establishing his right to a tax-exempt status."

Pius XII Academy v. Commissioner, T.C. Memo. 1982-97 provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization's request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service's denial, stated "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant." The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

Application of Law

A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. You have not submitted sufficient information establishing you are operated exclusively for 501(c)(3) purposes, rather, the information you have submitted indicates, in addition to research and educational activities, you are engaged in potential political campaign intervention, commercial franchising operations and other disqualifying activities. (See Universal Life Church, Pius XII Academy, La Verdad, New Dynamics Foundation and Ohio Disability Association)

You are not described in Section 501(c)(3) of the Internal Revenue Code because you are not operated exclusively for exempt purposes according to Treas. Reg. Section 1.501(c)(3)-1(a)(1). You do not meet the operational test under Section 501(c)(3) because, as stated in Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not operated exclusively for one or more Section 501(c)(3) purposes.

On your website you describe franchising opportunities for organizations looking to become your branches. You offer these organizations a branch affiliation agreement, charge them a fee for this opportunity, even provide them with an EIN. You provide a 10-point primer for conducting operations. You inform these

organizations they will be exempt under 501(c)(3). This is the type of activity indicative of a for-profit, commercial operation, rather than one that furthers charitable or educational purposes. Therefore, you are offering a product or service for a fee that is not furthering an educational or charitable exempt purpose. Similar to B.S.W. Group and American Institute for Economic Research, your application and web site indicate you have a significant non-exempt commercial purpose not incidental to your educational purpose, and are not entitled to be regarded as exempt. You have not provided information establishing that this activity furthers your exempt purpose or is an insubstantial amount of overall activities.

You have indicated the intent to work in close connection with an organization (D) you have indicated is exempt under 501(c)(4). This includes shared facilities, staff and equipment. You were also going to provide grant funding to D. No shared resource agreement was provided, no documentation was provided verifying their exempt status, and no public information was found regarding D. Any resources shared with or grants given to D must be documented as furthering an exclusive 501(c)(3) purpose. Since you have not provided this documentation it cannot be determined that you would be using resources and funds in conjunction with D exclusively for 501(c)(3) purposes as is required by Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

An organization otherwise described under 501(c)(3) does not qualify for exemption if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office (Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii)). Rev. Rul. 2007-41 lists certain indicators of political campaign intervention, such as the inclusion of particular candidates in organization events, the timing of such events, and the lack of neutrality involving candidates. You have indicated you or your branches would become the place for political action, ideas, education and camaraderie. You indicated that you or your branches would host debates and have candidates asking each other questions. You would find ways to educate voters and always 'play to win' within city councils, board of supervisors, school boards, etc. That you should open channels of communication with the city council, board of supervisors, congressman, state assemblyman/senator and help them. Portions of these types of activities, such as voter education, candidate forums/debates and informative information, can be qualifying activities under 501(c)(3). However, there are no further details to provide evidence to conclude that the above activities are qualifying under 501(c)(3), rather than those of an action organization per Treas. Reg. Section 1.501(c)(3)-1(c)(3)(iii). You have indicated portions of these activities that are furthering campaign intervention, such as political action, educating voters with the intent of 'playing to win' local contests, and helping officials. For instance, you indicate you are hosting candidate forums (e.g., the debates), but do not describe how you decide which candidates will be invited and whether the same questions will be asked of all candidates. No amount of political campaign intervention is permissible under 501(c)(3). Therefore, with no further details we are unable to determine from your activities description that you are not intervening in political campaigns.

Rev. Proc. 2016-5 provides that a favorable determination will be issued only if the applicant, responsible for the representations contained in the application, provides supporting documentation that it meets the particular requirements of the section under which it is applying. While you have provided details on research programs you intend to conduct, which would lead to workshops and forums educating the public, you have also indicated an affiliation, shared resources, and grants would be made to an entity that could not be verified as exempt. Your web site describes offering exempt status under a franchise agreement for a fee to interested like-organizations, or branches. You describe action items for those branches including political activism, and offer suggestions on ways to become a place for political action, host candidate debates, and open lines of communication with and look for opportunities to "garner small victories" with city council, school boards, congressman and senators. You encourage the branch to look out for faux action groups and to add action

groups all the time. We sent several information requests in an attempt to better clarify your activities. However, no further information was provided, and without further documentation on how an activity is conducted, we cannot conclude your activities are exclusively furthering 501(c)(3) purposes.

Conclusion

Based on the above facts and analysis, you have not established that you qualify for exemption under section 501(c)(3) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Pursuant to the December 12, 2014, final judgment in *Linchpins of Liberty, et. Al., v. United States of America*, Civil Action No. 1:13-cv-00777-RBW, you are not entitled to Declaratory Judgment rights under section 7428 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 through the Department of Justice.

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