



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201748010**
Release Date: 12/1/2017
UIL Code: 501.33-00

Date: September 7, 2017

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
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*

cc:



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: July 13, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

b dollars = dollar amount

c dollars = dollar amount

d dollars = dollar amount

g = percentage

h = percentage

P = State

R = Date

X = Country

Y = Culture

UIL:

501.33-00

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 P on R as a non-profit corporation for the purpose of assisting the under-privileged population and for charitable, religious, educational and scientific purposes.

Per your Bylaws, you are formed to provide healthcare assistance and rural development in rural areas of X. Also, you will educate and promote Y culture in the United States. Last, you will provide assistance to families in which tragedy has struck through loss of any kind, including death, divorce, separation, addiction, home violence or other, to break the cycle of isolation and distress.

Your Bylaws state that membership is open to all persons who subscribe to your aims, abide by your Bylaws, rules, and regulations, and assist in furthering your aims and objectives. Members must attend meetings regularly. Members must pay their dues. Spouses and children must register individually to become a member.

Your Bylaws provide detailed explanations of the following required membership fees:

- Members pay annual dues used to run the association and fund short term projects or emergencies. There is an annual registration fee of b dollars.
- Each member must pay c dollars to an emergency fund upon becoming a member. This is a one-time fee. Funds will be used to assist in funeral arrangements. In the event of a death and the funds are used, additional funds will be raised to replenish the fund. To be eligible to receive funds, the recipient member must be in good standing in accordance with your Bylaws.
- Each member will contribute an annual fee of d dollars for the sinking fund. This money will be used for marriage, birth, graduation, illness, or death of an immediate family member. The amount of c dollars will be disbursed to assist the bereaved family. To be eligible to receive funds, the recipient must be in good standing in accordance with your Bylaws.
- Each member will contribute b dollars during the meeting to an entertainment fund. The member must send b dollars even if they are not attending the meeting, otherwise the b dollars will be deducted from the member's sinking fund and should be replenished within a few months.

In supplemental attachments, you state you will offer corporate membership opportunities to individuals with fees ranging up to c dollars. Members will have access to free publications and data, as well as special events, ad-hoc business training, and advocacy services. You did not provide any other information on corporate membership opportunities.

In order to apply for assistance from the emergency fund and sinking fund, a family must complete a request form. A finance committee reviews it and forwards it to the Board of Directors for approval. You estimate the emergency fund will be g percent of your funds and the sinking fund will be h percent of your funds.

Your initial Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, did not contain a narrative description of activities. When you were asked to provide an activity description, you provided one that restated the purposes in your Bylaws. Your stated your main activity is to provide healthcare and education assistance to rural and underprivileged communities. You also will provide assistance to families in which tragedy has struck. You will conduct your activities in the United States and X. You state you will not charge fees to recipients of any of your services.

You describe your economic development activities as empowering, training, and encouraging local communities to form cooperatives to collect and distribute farm products. This will enable individuals in the communities to care for their health and educate their families. Villagers engaged in farming will be eligible to participate in cooperatives. The cooperatives will assist local farmers selling their produce. You will spend g percent of your funds on this activity.

You intend to finance your operations with membership programs, grants, community fundraising, and private donations. In your Form 1023, the financial information provided shows your revenues are only from membership fees and your budgeted expenses are for professional fees, fundraising expenses, and contributions. However, you also provided a supplemental attachment of projected financials showing estimated revenues

from memberships, grants, fundraising, and donations, but no expenses. The projected financials contain significantly larger revenues than those provided in Form 1023. You later clarified your average gross receipts would not be as large as those estimated in the projected financials.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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(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.

Revenue Ruling 67-367, 1967-2 C.B. 188, describes an organization whose sole activity was the operation of a scholarship plan for making payments to pre-selected, specifically named individuals. The organization established a plan whereby it entered into agreements with subscribers. The subscribers deposited a certain amount of money with a designated bank. The subscriber also named a specific child to be the recipient of the scholarship money. The recipient received the scholarship around the time he or she were to begin college. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it was serving the private interests of its subscribers rather than serve public charitable and educational interests.

Revenue Ruling 69-175, 1969-1 C.B. 149, describes an organization which was formed by parents of pupils attending a private school. The organization provided bus transportation to and from the school for those children whose parents belong to the organization. The organization did not qualify for exemption under Section 501(c)(3) of the Code because it served a private rather than public interest

Revenue Ruling 76-205, 1976-1 C.B. 226, describes an organization formed to aid immigrants in overcoming social, cultural, and economic problems by providing personal counseling, referrals to helpful agencies, social and recreational activities, instruction in English, and distributing a newsletter containing information on attaining citizenship, securing housing, and obtaining medical care is operated exclusively for charitable and educational purposes and qualifies for exemption under section 501(c)(3) of the Code.

Revenue Procedure 2017-5, 2017-1 I.R.B. 232, Section 6 (and its predecessors) 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 Better Business Bureau of Washington, D.C., Inc v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Supreme Court of the United States interpreted the requirement in Section 501(c)(3) of the Code that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. The presence of a single non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court held that an organization that as its primary activity operated a school to train individuals for careers as political campaign professionals was not operated exclusively for exempt purposes as described in Section 501(c)(3) of the Code because the school's activities conferred impermissible private benefit. The court defined "private benefit" as "non-incidental benefits conferred on disinterested persons that serve private interests."

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

You are not operated exclusively for one or more exempt purposes under Section 501(c)(3) of the Code as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you are operated for the private benefit of your members rather than operating to provide a public benefit.

You have not established that you are operated exclusively for one or more exempt purposes as required in Treas. Reg. Section 1.501(c)(3)-1(c)(1). A substantial portion of your funding will be used for an emergency fund, a sinking fund, and an entertainment fund, which only benefit your members. This results in a substantial private benefit to your members.

You are similar to the organization described in Revenue Ruling 67-367. Like that organization, your activities serve to benefit your members rather than benefit the public. The organization in this revenue ruling made payments only to designated individuals identified by the contributors. The emergency, sinking, and entertainment fund payments are limited to your members and their families. The payment of benefits to pre-selected, specifically named individuals serves a private interest rather than a public interest as contemplated under Section 501(c)(3) of the Code and Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are similar to the organization described in Revenue Ruling 69-175. The group of parents in this ruling

provided a cooperative service for themselves and thus served their own private interests. In your case, you charge your members a fee and provide funding to members and their immediate families when various events occur. Even though you state that applications are required and must be approved by the board and that recipients of your services won't be charged fees, your Bylaws show that payments occur automatically after certain life events. In addition, only members in good standing who have paid their fees are eligible to receive funding. Therefore, the payment of these benefits to your members serves a cooperative, private interest rather than a public interest.

As in Better Business Bureau, a single, substantial non-exempt purpose is sufficient to prevent exemption. Although you plan to provide healthcare and education assistance, you have the substantial purpose of providing member benefits through funds only available to members in good standing, which results in private benefit. Therefore, you are distinguished from the organization described in Revenue Ruling 76-205, which provided aid to immigrants in overcoming social, cultural, and economic problems. As described in American Campaign Academy v. Commissioner, substantial private benefits are impermissible under Section 501(c)(3) of the Code. Accordingly, you are precluded from qualifying for exemption.

In New Dynamics, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. The documentation you provided references many activities, but does not demonstrate your activities are exclusively charitable or educational. For example, you will provide healthcare and education assistance, but offer no explanation of who is eligible or what assistance will be provided. You state you will provide special events, ad-hoc business training, and advocacy services with no further details of what these programs are or who participates. When asked about your plan to form cooperatives to assist local farmers in selling produce, your explanation of eligibility was that villagers engaged in farming were eligible, without explaining who the villagers are, where they are located, or any other qualifying criteria. You will provide assistance to families where tragedy has struck, but you do not explain if this is a separate program from your membership funds described in your Bylaws, which provide funding only for members who experience tragedy. As provided in New Dynamics, any gaps in the administrative record will be resolved against the applicant. Similarly, in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. Your administrative record demonstrates that your emergency, sinking, and entertainment funds only benefit members in good standing and they are substantial activities. This shows you are not operated for exclusively charitable and educational purposes. Therefore, we are unable to determine that you qualify for exemption.

Because you failed to provide sufficient details in your initial application and additional documentation showing that your activities are exclusively charitable and educational, you have not established that you meet the requirements for exemption under Section 501(c)(3) of the Code as required by Revenue Procedure 2017-5.

Conclusion

Based on the information submitted, we conclude that you are not an organization described in Section 501(c)(3) of the Code because you are operated for the substantial private benefit of your members. Therefore, you do not qualify for exemption 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. 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892

cc: