



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201814009**
Release Date: 4/6/2018
UIL Code: 501.03-30

Date: January 8, 2018

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: October 26, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = Name of State

d = number (alphabetic spelling)

d = number (numeric symbol)

g = number (alphabetic spelling)

g = number (numeric symbol)

k dollars = number (alphabetic spelling)

k dollars = number (numeric symbol)

m = number (alphabetic spelling)

m = number (numeric symbol)

p = number (alphabetic spelling)

p = number (numeric symbol)

r = number

s dollars = number

t dollars = number

UIL:

501.03-30

501.36-00

501.36-04

503.00-00

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 meet the operational test under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You were incorporated on the date of B in the state of C. Your Certificate of Incorporation provides that you are organized exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Code. Your board of directors is comprised of three unrelated individuals.

Your sole activity is to provide an internet crowdfunding platform to your clients for a fee so that they may fundraise for the charitable programs that they support. You seek to recruit high-profile individuals or organizations with a personal brand as clients so that they may leverage the power of their celebrity status and drive the passions of their followers and sponsors to make tax-deductible contributions using an internet crowdfunding platform.

You stated that “Through the ability to generate high-profile publicity along with an innovative technology platform, [you] will fulfill [your] charitable purpose by supporting the non-profit activities of individuals and organizations for which the expense and oversight of a tax-exempt entity does not make sense, along with facilitating gifts to public charities organized and operated exclusively for charitable, religious, or educational purposes as defined by Section 501(c)(3).”

Regarding your fundraising activities, you stated that your “...fundraising efforts will consist primarily from collecting management fees obtained by operating as a fiscal sponsor to client organizations and individuals, and facilitating gifts to [organizations described under Section 501(c)(3) of the Code]....As appropriate, [you] may consider employing additional methods of fundraising...”

You will provide your clients access to an online crowdfunding platform to promote and publicize their fundraising campaigns. According to your Platform License Agreement, you desire “to make the Platform available to Client, in order to generate charitable contributions through fundraising campaigns in support of the Client’s philanthropic objectives...”

Under the provisions of the Platform License Agreement, your clients are solely responsible for the promotion, marketing and messaging of the fundraising campaigns. The Platform License Agreement also provides that your clients must represent “...that the designated beneficiary of its Campaign (i) has and will maintain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code; and (ii) has authorized the Client to solicit charitable donations on its behalf.”

With respect to the fees you charge, you stated the following in your response to our request for additional information:

Consistent with the information currently reflected on [our] website, [we generate] revenues through two separate deductions from the gross amount of charitable contributions, which are as follows:

- Platform management fee: In order to cover the costs for technology development and website maintenance, [we deduct] a fee of d percent (d%) from each the charitable contributions received in support of each hosted nonprofit campaign.
- Third-party payment processing fees: In order to provide a reimbursement of the fees charged by its third-party payment processing vendors ..., [we deduct] the actual cost of g percent (g%), plus k dollars (k dollars) per transaction.

Fees were determined based on the business expenses associated with launching and operating [our organization], as well as a competitive analysis of the fees charged by similar organizations that generate charitable revenues by hosting online fundraising campaigns through crowdfunding, auctions and/or sweepstakes, which range from as low as m percent (m%) to as high as p percent (p%) for these similar services.

A provision in the Platform License Agreement with your clients states that any amount due and not paid within r days following your invoice will bear a finance charge.

You are solely supported by fees from services rendered. According to your financial data, your projected revenues consist only of technology fees (the platform management fee and the third-party payment processing fees) ranging from s dollars to t dollars projected each year. Based on your financial data, you do not receive any gifts, grants or contributions from the general public. Your compensated employees will include an Executive Director, an Operations Director and a Technology Director.

Law

Internal Revenue Code Section 501(c)(3) provides for exemption for organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 502(a) of the Code, in describing a feeder organization, provides that an organization operated for the primary purpose of carrying on a trade or business for profit will not be exempt under Section 501 of the Code on the ground that all of its profits are payable to one or more organizations exempt under Section 501 of the Code.

Section 513(a) of the Code describes an “unrelated trade or business” as any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501 Code.

Section 513(c) of the Code provides that a “trade or business” includes any activity which is carried on for the production of income from the sale of goods or the performance of services. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

Treasury Regulations 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) states that in order to meet the operational test, 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(e)(1) states an organization may meet the requirements of Section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization’s exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in Section 513 of the Code. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under Section 501(c)(3) of the Code, even if it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

According Revenue Ruling 73-164, 1973-1 C.B. 223, a church-controlled commercial printing corporation whose business earnings were paid periodically to the church, but which had no other significant charitable activity, was a feeder organization as described in Section 502 of the Code and did not qualify for exemption under Section 501(c)(3) of the Code. All of the organization's profits were derived from its commercial printing business, which were paid over to the church at the end of each calendar quarter of operation. The publication functions performed for the church accounted for approximately ten percent of the overall publishing activities of the organization. Since the organization had no other significant charitable activity and its principal income-producing activity was the conduct of a trade or business, it was held that exemption was precluded under Section 501(c)(3) of the Code because the organization was a feeder organization as described under Section 502 of the Code.

In *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279 (1945), the Supreme Court found that the "commercial hue" permeating the organization was reflected in its charter provisions, which was dedicated to the securing of "educational and scientific advancements of business methods" so that merchants might "successfully and profitably conduct their business." The organization's activities were largely animated by this commercial purpose. The Supreme Court held that the presence of a single nonexempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978), the organization's sole activity was to offer consulting services on rural-related policy and program development to limited-resource organizations for a fee. The organization did not limit its clientele to organizations which were themselves organizations described under Section 501(c)(3) of the Code, but only to organizations which were either nonprofit or exempt. The fees charged were set at or close to cost, but were not less than its full cost of providing its services. The organization's financing did not resemble that of the typical organization described under Section 501(c)(3) of the Code. The organization had not solicited or received voluntary contributions from the public. Its only source of income was from fees for services, and those fees were set high enough to recoup all projected costs and to produce a net profit. It failed to show it would not be in competition with commercial enterprises. The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Court held that the organization's primary purpose was not educational, scientific, or charitable, but rather was the conduct of an ordinary commercial consulting enterprise in competition with other commercial firms. The organization was not operated exclusively for tax-exempt purposes within the meaning of Section 501(c)(3) of the Code.

In *Easter House v. United States*, 846 F. 2d 78 (Fed. Cir. 1988), aff'g 12 Cl. Ct. 476 (1987), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code. The organization was operated for a substantial nonexempt purpose rather than for the exempt purposes of providing educational and charitable services to unwed mothers and children. The court stated that "adoption services do not in and of themselves constitute an exempt purpose." The court found that the adoption agency was operated in a commercial manner. The agency's operation was funded completely by the fixed fees charged to adoptive parents. It relied entirely on those fees and sought no funds from federal, state or local sources, nor engaged in fund raising programs, nor did it solicit contributions. Ultimately, the agency was not entitled to tax exempt status on basis that it was "not distinguishable from commercial adoption agency." The court found that the adoption agency's primary goal was furthering of a "business purpose" rather than the advancement of an educational or a charitable purpose.

In *Living Faith, Inc. v. Commissioner*, 950 F.2d 365 (7th Cir. 1991), the court of appeals upheld a Tax Court decision stating that the organization operated its restaurants and health food stores for a substantial commercial purpose and it did not qualify for exemption under Section 501(c)(3) of the Code. The appellate court provided the factors that may indicate a substantial nonexempt commercial purpose. These factors include:

- Direct competition with other for-profit businesses
- Existence and amount of annual and accumulated profits
- Competitive pricing policies and lack of below-cost pricing
- Use of promotional materials to enhance sales
- Advertising of goods and services
- Lack of plans to solicit charitable contributions
- Hours of operation that are competitive with other commercial enterprises

In *Airlie Foundation v. Internal Revenue Service*, 283 F. Supp. 2d 58 (D.D.C., 2003), due to the commercial manner in which the organization conducted its activities, the court held that the organization was operated for a nonexempt commercial purpose, rather than for a tax-exempt purpose. The court found that the organization operated its conference center in a manner consistent with that of a commercial business. “Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.”

Application of law

According on the information in the administrative record, we hold that you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) of the Code. You do not operate for a tax-exempt purpose under Section 501(c)(3) of the Code. Your sole activity is the conduct of a trade or business for the production of income. You conduct no other activity aside from making the use of an internet crowdfunding platform available to your clients for a fee. You deduct both a platform management fee and a third-party payment processing fee from the donations made through the online crowdfunding platform. Your clients include any individual or organization willing to pay your fees. Your fees are set at fair market value rates comparable to other service providers that generate income by hosting online fundraising campaigns through crowdfunding. Your activities are carried out on a regular and continuous basis by compensated employees including your Executive Director, Operations Director and Technology Director. Based on Treas. Reg. Section 1.501(c)(3)-1(e)(1), you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) of the Code because you are operated for the primary purpose of carrying on an unrelated trade or business, as defined in Section 513 of the Code.

Additionally, we hold that you do not meet the operational requirements for recognition of tax exemption under Section 501(c)(3) of the Code. You fail the operational test as indicated in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You operate for a substantial nonexempt purpose in contravention of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities is not in furtherance of an exempt purpose.

Like *Better Business Bureau of Washington D.C., Inc. v. United States*, *supra*, you have an underlying commercial motive that distinguishes your activities from those of organizations described under Section 501(c)(3) of the Code. As provided by the Supreme Court in *Better Business Bureau of Washington D.C., Inc.*,

the presence of a single nonexempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. A substantial purpose of your organization is to operate a trade or business for profit. You serve a substantial nonexempt purpose, which precludes you from tax exemption under Section 501(c)(3) of the Code.

You are operated for a substantial nonexempt purpose similar to the organization described in *Airlie Foundation v. Internal Revenue Service*, supra. Applying the factors stated in *Airlie Foundation* as demonstrating a substantial nonexempt commercial purpose, your provision of an internet crowdfunding platform to clients for a fee directly competes with other internet crowdfunding platform service providers. Like a commercial business, your services are available to any individual or organization willing to pay your fees. You do not limit your clients to organizations that are described under Section 501(c)(3) of the Code. Another factor considered in assessing a commercial manner of operations is the extent and degree of below cost services provided. You have provided no evidence that your clients receive free services, or services according to their ability or pay. Your fees are set at a rate that is comparable to other similar internet crowdfunding platform service providers. Moreover, based on your financial data, your revenues will come exclusively from technology or management fees received from providing the use of an online crowdfunding platform. Thus, you meet most of the factors indicated by the courts as operating for a substantial nonexempt purpose.

You are like the organization described in *Living Faith, Inc. v. Commissioner*, supra, where the court of appeals upheld a Tax Court decision stating that the organization operated its restaurants and health food stores for a substantial commercial purpose. You also meet most of the factors provided by the appellate court in *Living Faith, Inc.* as exhibiting a substantial nonexempt commercial purpose. Your provision of an internet crowdfunding platform to clients for a fee is in direct competition with other for-profit internet crowdfunding platform service providers. The fees you charge are competitive with the fees charged by other internet crowdfunding platform service providers offering similar services. You do not offer below-cost services to your clients. The financial data you submitted showed that all of your income is derived from fees for services rendered. You are not supported by gifts, grants and charitable contributions from the general public. You are operated in a manner indistinguishable from a commercial enterprise. By operating in the manner described, you are furthering a substantial nonexempt purpose.

You are analogous to the organization described in *Easter House v. United States*, supra, where the court determined that the organization was not exempt because its conduct of adoption services activity was in furtherance of a nonexempt commercial purpose. Similar to adoption services, your provision of crowdfunding platform services to clients for a fee do not in and of themselves constitute an exempt purpose, even if you facilitate the distribution of funds raised to organizations described under Section 501(c)(3) of the Code. Your sole activity is to render a service to your clients in exchange for a fee. Your activities are not carried out to accomplish a tax-exempt purpose under Section 501(c)(3) of the Code.

You are comparable to the organization described in *B.S.W. Group, Inc. v. Commissioner*, supra, where the court indicated that the provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Your activities constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Like a for-profit business, all of your revenues are from fees paid by your clients for the use of an online crowdfunding platform. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. Your fees however, are set high enough to recoup all projected costs and to produce

a profit. Thus, based on the totality of the facts and circumstances, you are operated for the substantial nonexempt purpose.

Moreover, you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) of the Code because you are a feeder organization as described under Section 502(a) of the Code. You are operated for the primary purpose of carrying on a trade or business for profit and you seek recognition of tax exemption under Section 501(c)(3) of the Code on the ground that all of your profits are payable to one or more unrelated organizations exempt under Section 501(c)(3) of the Code.

Similar to the organization described in Rev. Rul. 73-164, you are a feeder organization within the meaning of Section 502 of the Code and do not qualify for exemption under Section 501(c)(3) of the Code. Like the organization described in Rev. Rul. 73-164, you are operated for the primary purpose of carrying on a trade or business for profit, providing your clients the use of an online crowdfunding platform for a fee, and seeking exemption on the ground that all of the funds raised, less fees, are payable to unrelated organizations exempt under Section 501(c)(3) of the Code. Therefore, you do not qualify for recognition of tax exemption under Section 501(c)(3) of the Code because you are a feeder organization within the meaning of Section 502 of the Code.

Your position

You stated that you will fulfill your exempt purpose by inspiring and facilitating charitable gifts from the general public to public charities described under Section 501(c)(3) of the Code.

Our response to your position

Offering the use of an online crowdfunding platform to clients on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the recipients of the funds raised, by your clients using an online crowdfunding platform, are provided solely for exempt organizations is not sufficient to characterize the activity as charitable within the meaning of Section 501(c)(3) of the Code. Your primary purpose is to operate a trade or business for profit rather than to operate for a charitable purpose. According to Treas. Reg. Section 1.501(c)(3)-1(e)(1), tax exemption under Section 501(c)(3) is precluded because your primary purpose is the operations of an unrelated trade or business as defined under Section 513 of the Code.

Additionally, you are operated for a substantial nonexempt purpose in contravention of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. Your operations are indistinguishable from that of a commercial business. Your sole activity is to provide your clients with the use of an online crowdfunding platform for a fee. You are in direct competition with other online crowdfunding platform providers. Your services are available to any individual or organization willing to pay your fees. The fees are set sufficient high to recoup your costs and produce a profit. Based on your financial data, you are funded solely by the technology or management fees you receive from your clients for the use of an online crowdfunding platform. A substantial purpose of your organization is to operate a trade or business for profit rather than an exempt purpose under Section 501(c)(3) of the Code.

Furthermore, you do not qualify for recognition of tax exemption under Section 501(c)(3) of the Code because you are a feeder organization within the meaning of Section 502 of the Code. Your primary purpose is the operation of a trade or business for profit and you seek recognition of tax exemption on the ground that all your profits will be paid over to unrelated organizations exempt under Section 501(c)(3) of the Code.

Conclusion

Based on the administrative record, we hold that you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) of the Code. According to Treas. Reg. Section 1.501(c)(3)-1(e)(1), exemption is precluded because your primary purpose is to operate an unrelated trade or business as defined under Section 513 of the Code. Additionally, you are operated for a substantial nonexempt purpose in contravention of Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. Lastly, you do not qualify for recognition of tax exemption under Section 501(c)(3) of the Code because you are a feeder organization within the meaning of Section 502 of the Code. Your primary purpose is the operation of a trade or business for profit and you seek recognition of tax-exempt status on the ground that all of your profits will be paid over to unrelated organizations exempt 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*.

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