

Internal Revenue Service

Appeals Office
4330 Watt Avenue SA 7890
Sacramento, CA 95821-7012

Department of the Treasury

Employer Identification Number:

Person to Contact:

Number: 201833032
Release Date: 8/17/2018

Employee ID Number:
Tel:
Fax:

May 23, 2018

UIL: 501.33-00
501.35-00
501.36-00

Certified Mail

Dear _____

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(3).

We made the adverse determination for the following reasons:

Organizations described in section 501(c)(3) on the Internal Revenue Code and exempt from tax under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents or otherwise establish that you are operated exclusively for exempt purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals. Your activities more than insubstantially further non-exempt purposes, and you operate primarily for the benefit of private rather than public interests. Furthermore, you fail the organizational test for exemption because your articles of incorporation do not limit your activities to one or more exempt purposes and your dissolution clause does not ensure that assets will be dedicated exclusively to the 501(c)(3) purposes.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. For TAS assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892 How to Appeal an IRS Determination on Tax-Exempt Status



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

Date: **OCT 19 2017**

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date of formation
C = State
D = Individual
E = Brand
F = Organization
G = Individual
H = Type of company
j dollars = Amount

UIL:

501.33-00
501.35-00
501.36-00

Dear /

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation are silent regarding your purpose but state that upon dissolution you will gift your assets to F, a potential non-profit organization that you are planning as a "spin off." If F doesn't exist, you will gift your assets to a specifically named organization which is exempt under Section 501(c)(3) of the Code.

You submitted supplemental provisions to your Articles of Incorporation, which were not filed with the state. Those provisions indicate that you are formed exclusively to promote the freedom of speech through outdoor broadcasts. The provisions continue by stating that you are organized and operated exclusively for development

and management of outdoor broadcast space, educational, and charitable purposes, which qualify for exemption under Section 501(c)(3) of the Code.

Your Form 1023 states that you are dedicated to promoting free speech. To this end you will develop and manage outdoor digital broadcast space. Specifically, you will create E displays.

G is your president and CEO. You state that G is a former billboard operator who is trying to get back into the outdoor advertising industry. D, the son of G, plans to develop outdoor broadcast sites as one of your independent contractors. You explained that, like all operators, he will have his own business that operates completely independently of you, other than following your rules.

Since your inception you have been leasing or gaining easements to place your displays and soliciting businesses to broadcast on the E displays. You state these displays conflict with local ordinances/statutes that you believe are unconstitutional. Once a non-permitted model of free speech using E displays is created and defended, then your activities will switch to solicitation of members of H companies and creation of a social movement to support your activities. You will then become an overseer for the industry and provide validation and management services.

Any business that wants to broadcast with you must adhere to the state rules and pay your membership fee. Members are contractually obligated to use every eleventh message on each display for non-profit use and will return a percentage of gross broadcast revenues to you. You did not indicate anywhere in your application whether these "non-profit" organizations will be tax exempt or not.

Once you are fully functional, independent contractors will have the opportunity to fulfill sales of broadcast space and administrative functions for you. Rates will be commensurate with the industry and approved by your board. Independent contractors may earn 10 percent of the contract. They will develop broadcast sites that adhere to your rules and quotas. You receive contracts from independent sites. Contracts will be open for public bid.

Operators who do not convert their broadcasts to your standards will utilize 10 percent of their display faces for non-profit use within ten years of membership and 25 percent of their display faces within 25 years for their converted billboards. You receive broadcast space from independent contractor members with excess funds distributed to other non-profits via a budget approval process. Again, it was not stated whether the "non-profits" are exempt organizations.

The property owned by G includes two lease locations for the E displays. The rights to these display locations, if developed as outdoor advertising displays, would yield over j dollars each. One percent of gross revenue from broadcast space will be returned to G for his existing leases, trademarks and intellectual property rights. He will receive this income for his life and that of his immediate family. You will receive real properties, easements and/or leases in exchange for gross revenue which secures the right to develop broadcast sites on those properties.

Currently you do not make payments for services; however, you intend to approve a clerical rate for services provided to you and a sales commission for services sold to businesses. You said the going rate in the industry for sales commissions is ten percent of gross. Board members may be compensated for providing services to

you. An additional one percent is collected from everyone using the property for the individuals that facilitate bringing the property to the industry.

Once you expand from your own displays to those of for-profit operators, there may be additional legal challenges. All independent contractors will have an equal opportunity to develop E displays under equal obligations to you. You will seek independent contractors to fulfill sales of broadcast space and administrative functions at rates commensurate with the industry. A one percent fee is in accordance with industry standards regarding an aggregator of contracts. You are designed to be an aggregator of all digital displays of E independent operators and legacy billboard operators in the country by creating a national registry of outdoor displays. The operators can increase their revenue and preserve the industry in accordance with reasonable rules and quota for development based on population rather than zoning. Business gets an organized assembly of digital broadcast sites. The community gets public notices and noncommercial use of the displays.

Your model is to create a standard for outdoor broadcasts that bypasses the permitting process. In conjunction with a proven model that will evolve, it is hoped that a social movement will create pressure to support the standard. If the people support businesses that support the movement, then everyone wins. It is hoped that the government will respond by supporting the system through legislation. Non-profits and political candidates will benefit from free space on E displays or they can obtain broadcasts as a paid supporter. Non-profits will apply for broadcasts within an established radius. All non-profits will have an opportunity to broadcast on E displays and they will be rotated through the list of non-profits to be broadcast from any given site.

During election periods, free broadcast space for political candidates will be gifted to F, the organization you plan to create as a "spin off." F is not currently a legal entity. All candidates willing to adhere to F's rules will receive broadcast space. You will extend one or more E leases with a 20 percent lease cost, which will fund F. You said that 10 percent of the revenue will go to the landowner and 10 percent will be donated to F, once operational. F will provide display space to all candidates who agree to a campaign expense cap that is 10 percent less than the last campaign filed. The expense caps continue to decrease until the people or the current candidates file to raise the cap. Local candidates will be required to represent constituents within the same geographic boundary as the display.

You submitted copies of your website pages. Your website includes details regarding your rules, point system, quotas, pricing and application process. You charge an application fee for an E as well as a membership fee to H companies. The membership fee revenue will be used to sponsor and defend, as necessary, the two initial broadcast sites owned by G.

Sponsoring businesses will have their sponsorship broadcast on the initial two sites. Once you are launched, the membership fee will be increased by 100 percent. You plan to use quotas to control the number of displays in a geographic area based on population. A point rating system will be used to keep value in the E sites by limiting space between them and providing adherence to safety while providing a harmonious environment between the public, sponsors and your members. Businesses that sponsor broadcasts must review the point system to ensure that broadcasts will add productive marketing to the businesses as well as keep the value of the E system. The independent E displays owned by property owners/operators will be sponsored by businesses for their cost of development and upkeep of the non-profit broadcast faces.

You will be funded by membership fees and contracts with independent billboard operators. Excess funds will be distributed to community non-profits. The expense of sponsoring each eleventh message free to non-profits

and political candidates will be absorbed in the cost of the sponsorships for the remaining 10 sponsors of the broadcast site. One percent of gross revenue collected will be distributed back to the public through various games that bring awareness to the broadcast site.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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) 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) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable," is used in Section 501(c)(3) in its generally accepted legal sense and includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Rev. Rul. 73-285, 1973-2 C.B. 174, states that freedom of religion is one of the fundamental freedoms guaranteed by the United States Constitution. The First Amendment to the Constitution, as made applicable to the states by the Fourteenth Amendment, specifically forbids the states from enacting laws prohibiting the free

exercise of religion. Therefore, by providing funds for the defense of prosecutions which involve substantial constitutional issues of state abridgment of religious freedom, the organization is promoting social welfare by defending human and civil rights secured by law.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt 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 court found that a corporation formed to provide consulting services did not satisfy the operational test under Section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical Section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were Section 501(c)(3) exempt organizations.

In National Right to Work Legal Defense and Education Foundation v. U.S., 487 F. Supp. 801, 45 AFTR 2d 80-764 (DC NC 1979), the court stated that the organization's activities were charitable and that the Constitution recognizes the right to work as a human and civil right secured by law; therefore, defense of this right was beneficial to the community and was charitable in nature.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

Application of law

Organizational Test

Your Articles of Incorporation do not include a clause limiting your purposes to one or more exempt purposes. Additionally, your dissolution clause is too narrow. As stated in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4), to demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause and a valid dissolution clause. You do not have a proper purpose or dissolution clause; therefore, you are not organized for exempt purposes as described in Section 501(c)(3) of the Code.

Operational Test

You were formed primarily to develop and manage outdoor digital broadcast space for a fee. You will operate your own billboards and maintain a network of independent operators with whom you contract. These are not exclusively charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1). Therefore, you fail the operational test.

The presence of a single non-exempt purpose, if substantial in nature, precludes exemption regardless of any valid exempt purposes as described in Better Business Bureau. You plan to engage in substantial non-exempt activities by providing outdoor digital advertising space to for-profit businesses and political candidates during election cycles. While you do plan to provide free advertising space to non-profits, it is not clear if these non-profits will be exempt organizations. Even if the organizations are exempt, the free space will constitute a minimal amount of the total display time available. In addition, your plans to distribute funds to community organizations is not a substantial activity. Accordingly, you are not operated exclusively for one or more exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) and are not exclusively charitable as described in Treas. Reg. Section 1.501(c)(3)-1(d)(2).

Like the organizations in B.S.W. Group, Inc. and Easter House, you are in direct competition with and your activities are almost indistinguishable from commercial billboard businesses. Your activities are neither exclusively charitable nor educational; rather, your activities further substantial non-exempt purposes.

You will pay a one percent fee to G for his and his immediate family's lifetime for the use of the two billboard locations. Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. Any benefit you provide to non-profits in the community or to the public is incidental. Providing G and his family with a percentage of your revenue, with no stated limit, provides a substantial private benefit and precludes exemption under Section 501(c)(3) of the Code.

You are unlike the organizations in Rev. Rul. 73-285 and National Right to Work Legal Defense and Education Foundation. The organizations in both cases provided funds or legal representation to protect the civil rights of individuals. While the initial two billboards conflict with local ordinances/statutes that you believe are unconstitutional, your plans to operate a billboard network in a non-exempt manner overshadows any potential connection to the defense of freedom of speech. Any relationship to the defense of the right to freedom of speech is tenuous at best.

Your position

You referenced two court cases which involved the constitutionality of local ordinances regulating outdoor displays. In one case, it was determined by the court that a prohibitive ordinance would unconstitutionally restrict noncommercial use of display space. In the second case, the court indicated that before restricting free speech, an authority must prove there is a value gained by the restriction. Both cases were remanded. You believe these decisions create an opportunity for a non-profit to assert that they only intend to use the displays for partial use and that the remainder would enable commercial use. Local and state ordinances and statutes restrict billboards and the off-premise display of non-profit speech similar to what you are proposing. Since the displays restrict the use of public space, you said it appears to be in violation of the precedents set in the referenced cases. Some local authorities have further restricted billboard use to the extent of denying all

billboards. You will specifically target overlapping jurisdictions where small prohibitive ordinances are subject to challenge because they violate multiple precedents.

You said no one wants to support your idea but that everyone will win in the end. If someone goes to the trouble of preserving the space in the name of the people, then all will benefit. The outdoor operators will have the ability to increase their revenue and preserve the industry in accordance with reasonable rules and quota for development based on population rather than zoning. Business gets a distributed and organized assembly of digital broadcast sites. The community gets public notices and noncommercial use of the displays.

You went on to say that although everyone benefits, no one wants to begin the process of change. The people don't really want outdoor displays but they are protected free speech. Outdoor operators have negotiated monopolies and reduced competition. Business is reluctant to create any activity which would challenge their standing in the communities they sell to and to the authorities which regulates their businesses.

Our response to your position

The two court cases you cited to support your position do not apply to this determination; rather, they related to the constitutionality of local ordinances. We are not ruling on local ordinances regarding outdoor displays. The determination being made here is whether you qualify as an organization described in Section 501(c)(3) of the Code. Creating outdoor digital displays in the manner described above furthers substantial non-exempt purposes and precludes exemption under Section 501(c)(3) for the reasons described above.

Conclusion

Based on the facts and information provided, you are neither organized nor operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. You provide a substantial private benefit to G and his family. Your operation and management of digital billboards is a substantial non-exempt purpose. Therefore, you are precluded from 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892