



Department of the Treasury

Internal Revenue Service

P.O. Box 2508

Cincinnati, OH 45201

Release Number: **201910022**
Release Date: 3/8/2019
UIL Code: 501.33-00, 501.35-00

Date:
December 10, 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.

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*



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

Date:
September 28, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Formation date
C = State
M = Related for-profit entity

UIL:

501.33-00
501.35-00

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 the state of C on B. According to your Bylaws you were formed to provide scholarships for public educational institutions.

You assist educational institutions in attracting funding for endowed scholarships from college and university alumni, faculty, staff and supporters, by offering them, in return for their gifts, the right to niches (individual compartments, containing urns, holding cremated human remains) in a columbarium located on the campuses of such institutions.

You identify a donor or donors who will fund the educational institution's construction of a columbarium on its campus. In exchange the donor receives exclusive naming rights to the columbarium. This donor will also provide funding for the creation of an endowed scholarship (in his or her name) at that institution.

Agreements for the construction of each columbarium will be negotiated between the donor and the educational institution. Each such agreement will provide for the marketing and promotion of the niches by M. You were formed by M, a business owned by the three members of your board. M will oversee your day to day operations. M is in the business of selling columbaria to funeral homes or family members, for interment of deceased at an approved location designated by the funeral home or family members. However, M will only promote and market the niches of the columbaria established by educational institutions with its assistance. M

will not be directly involved in the construction of these columbaria. Donor and educational institution will agree on location and design, and the institution will award construction contracts through an open bidding process. M will receive no payments relative to the design or construction of the columbaria.

Apart from bringing together the columbarium donor(s) and educational institutions, for which M is rewarded with a contract to market and promote the columbarium, you are a non-operating entity. Your sole purpose is to receive tax-deductible donations for endowed scholarship funds or the construction of columbaria. You describe yourself as a conduit, or intermediary, through which charitable contributions will be distributed to a college or university or their affiliated organizations. You will provide no additional services.

You will not oversee or be involved in the awarding of scholarships and/or the distribution of any scholarship funds. The criteria for applying, selecting and awarding of scholarships will be established, between the donor and the institution, at the time the endowed scholarship is created and initially funded. Each institution, will thereafter be responsible for overseeing the scholarship guidelines for their institution.

After the columbarium has been constructed and the endowed fund created, other donors may make contributions to the endowed scholarship funds or to the columbarium construction fund. The contribution entitles the donor to a niche in the columbarium. In effect, it is promoted as a quid pro quo contribution. However, the ultimate beneficiary, the educational institution, does not pay the costs of the premium -- the right to a niche. Instead M, interposed between the donor and the educational institution, receives payment directly from the donor. percent of the donor's total payment goes to M to cover its operating costs. percent is for the scholarship endowment or the columbarium fund. Donors have the options of contributing it themselves to a "qualified IRC 501(c) tax-exempt organization" associated with the college or university, or directing you to pay it to such organization for construction of a columbarium or the scholarship endowment. M created you to provide this second convenient option to the donors.

Any material restrictions made by a donor, as to their contribution, will be negotiated and agreed to at the time the donor and institution enter into an agreement setting forth the terms and conditions for both the construction of the columbarium and the creation of the endowed scholarship fund. M and you will abide by those terms when making distributions into the endowed scholarship fund at each individual institution. You will prepare annual reports showing all revenues received, from the sale of niches, and the dates disbursements were made to each institution having a columbarium.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides 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 the operational test, it is not exempt.

Treas. Reg. 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in Section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Treas. Reg. 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection, it is necessary for an organization to establish 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.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (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 International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under section 501(c)(3) of the Code of a nonprofit corporation that took physicians on tours throughout the world, providing continuing medical education seminars during the tours. The tours were arranged by a travel agency in which a trustee of the petitioner had an ownership interest. The petitioner used the agency exclusively for all travel arrangements. There is no evidence that the nonprofit solicited competitive bids from any other entity. The agency billed travel charges directly to the individuals participating in the tours. The petitioner prepared and distributed brochures promoting their program, but emphasizing its sightseeing and recreational component rather than the medical curriculum. The Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that when a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) even if it furthers other exempt purposes.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196, 1984, the court held that a nonprofit organization, which operated bingo games on the premises of a for-profit business while it conducted its regular business activity, the sale of food and beverages, and turned over its profits to various scholarship funds, could not be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial part of its activities was not in furtherance of an exempt purpose. The bingo games were conducted by the owners of the business who allowed the bingo players to be solicited by their employees to purchase food and beverages. From these facts, the court concluded that more than an insubstantial purpose of the petitioner's activities was to attract persons, by the way of the bingo games, onto the premises in the expectation that they would purchase food and beverages while participating in the games. Petitioner's activities were thus, in substantial part, designed to enhance the profitability of the business. Petitioner argued that its operations and the business's were separate because the receipts from the bingo games and the receipts from food and beverage sales were accounted for separately; and that, because no cash payments were made by the petitioner to the business for either rent or wages, that all of petitioner's activities were for an exempt purpose. The court, however, found that the activities of petitioner and business were so interrelated as to be functionally inseparable, regardless of the manner of accounting of receipts and disbursements.

In KJ's Fund Raisers, Inc. v. Commissioner, 74 T.C.M. 669 (1997), the court held that a nonprofit organization, which sold lottery tickets on the premises of a for-profit business had a substantial non-exempt purpose to enhance the profits of the for-profit business. The owners of the for-profit business formed the nonprofit organization purportedly to raise funds for distribution to charitable causes. The nonprofit's lottery tickets were sold during the regular business hours by the owners and employees of the for-profit business. Although the petitioner contended that the activity did not have the effect of increasing the sales of beverages, the Court held that KJ's Place benefited from the publicity surrounding donations given by petitioner.

Application of law

You are not described in Section 501(c)(3) of the Code because you are not operated exclusively for charitable and educational purposes. You do not meet the provisions of Treasury Regulation Section 1.501(c)(3)-1(a)(1) because you do not meet the operational test, failing the requirement of Treas. Reg. 1.501(c)(3)-1(c)(1) that no more than an insubstantial part of your activities is devoted to a non-exempt purpose. You are not operated exclusively for exempt purposes because you serve private interests, rather than public interests as required by Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). Your activities substantially benefit M and your board members, its proprietors.

You describe yourself as a conduit or intermediary. You exercise no control over the donations you receive and pay out. You simply receive funds from donors and direct them to the schools or exempt entities affiliated with them as the donors direct. You abide by the terms of the agreements your donors make with the schools. You are simply as a pass-thru entity, engaging in no charitable operations of your own. Your sole purpose is to provide a convenience for persons who are simultaneously contributing to endowed scholarship funds and reserving niches through M, and who would otherwise have to make separate arrangements to contribute to the scholarship endowments or columbarium construction funds. The fact that there is no monetary interchange is immaterial. A realistic look at the operations of the two entities shows that their activities are so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements does not change that fact.

You are similar to the organization described in Better Business Bureau. You were formed for the substantial purpose of providing custom to a related for-profit organization, M.

You are like International Postgraduate Medical Foundation in that M benefits substantially and non-incidentally from the activities which you carry on, even though you make no payments directly to M, by providing a convenience to M's clients. In a similar way, the petitioner in the case benefited the related agency by arranging the tours exclusively through the related agency and promoting them through brochures ostensibly soliciting participation in its programs.

KJ's Fund Raisers held that the nonprofit's activities served the commercial purposes of for-profit organizations that formed them, even where individuals unrelated to the for-profit organizations formally controlled the nonprofit. Similarly, you have been set up by M, a related for-profit, to provide a way for purchasers of niches from M to make donations to schools. This activity is a valuable inducement to purchase a niche through M, resulting in a substantial private benefit to M, and its owners, your board members.

Like P.L.L. Scholarship Fund you cannot be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial part of its activities was not in furtherance of an exempt purpose.

Your activities are likewise thus, in substantial part, designed to enhance the profitability of the related business, M, even though there is no monetary exchange and separate accounts are kept.

Conclusion

Based on the above facts and legal analysis, we conclude that you fail to meet the operational test of Section 501(c)(3) of the Code. You are operated to serve the private interest of M, and your board members who own M.

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