



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201925017**
Release Date: 6/21/2019

Date:
March 27, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00, 501.36-01

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

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:

February 5, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

r dollars = Amount

s dollars = Amount

t percent = Percentage

v dollars = Amount

W = State

X = Date

Y = Individual

UIL:

501.00-00

501.36-01

Dear _____ :

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

Issues

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

Facts

You incorporated in the State of W on X. According to your Articles of Incorporation, you are organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the Section 501(c)(3) of the Code. Additionally, your Articles state that your "business activity" is as follows: "To provide marketing, building awareness, content distribution, and development for Non-profit Clubs and Organizations."

Your Bylaws state that you are formed to provide business development and full-service marketing consulting services for non-profit public works organizations including schools and youth organizations. Your focus is to assist these traditionally under-represented non-profit and educational institutions gain a foothold in the digital marketplace.

You said your sole purpose is to provide business development, all forms of marketing know-how in a consultative form to under-represented, non-profit, youth organizations, schools and the like. You provide ad-hoc services as well as on-site or remote company integration. Your target clientele are non-profit and public works organizations.

The services you provide include fundraising, all forms of marketing including generation demand, website development, content creation, management and distribution, marketing and business development strategy and development, online reputation management, customer relationship management, customer journey and lead scoring, website analysis, usability testing, and analytics.

Prior to incorporating, your President, Y, operated a consulting business as an independent contractor at a loss. Y formed you and states that you are not a for-profit successor. However, the financial data and business contracts you provided are for the time that Y operated as a for-profit independent contractor. Your name also includes Y's surname. Your board consists of Y, her husband, and a friend/business associate.

You provided your website address. The website doesn't say that your activities are limited to non-profit organizations. Also, the website includes articles written two years prior to your formation. Your website includes a list of your clients and most of the clients listed are for-profit corporations. We asked for a list of your prior clients and you provided a list of seven companies/organizations. Only one organization you listed is a non-profit. When we asked for more information about two of the organizations, you provided contracts with them. These two contracts were both between Y as an independent contractor and the clients.

Your staff administers your program on a volunteer basis. You will advertise through website and content distribution on social media platforms and you will be funded through donations, fundraisers, and consulting service fees. You later said your revenue comes from business and marketing consulting services. You make these sales on your website and do promotions across social media platforms and industry blogs. You sell your services continuously and project two contracts a year.

The budgets you provided with your application show that all of your revenue is expected to come from sales income. You described your sales income by saying "We are selling business and marketing consulting services." Your budgets also include two years of revenue prior to your incorporation. The budgets you provided show that you have operated previously at a loss and plan to continue to operate at a loss. When we asked how you would be able to operate at a loss you said that Y has been covering the loss through income from other periodic employment, as well as providing marketing services in lieu of payment. We then asked for you to provide a revised budget that reflects any donations made by Y. These revised budgets you provided took the revenue provided previously in the budgets as sales income and moved them all to the donation line with a note beside the amount that it was 1099 income.

Your budgets included rent expense. When we asked about this you said that you will retain an office and pay rent and a share of utilities. Sometimes this payment is in the form of marketing services rendered. When we asked for more information about this including a copy of any lease agreements, you said that the office is part of Y's home. There is no rental agreement. You said, "I provide content and online reputation management in addition to any monies I bring in to pay for the office space." When we then asked how much rent you pay you said that "We provide marketing services as rental payment, which varies." You said it's around v dollars per year.

You said your fees are on a sliding scale based on what your clients can pay. When asked for a fee schedule you said you don't have one. You said, "My rates per hour range from r dollars to s dollars."

Your board meeting minutes state that Y provided a company budget from prior years operating as an independent contractor. We asked for more information about this and you indicated that Y is confused as how to distinguish between monies earned as an independent contractor and as your President.

You said that Y continues to do work as an independent contractor with for-profit organizations if the opportunity presents itself. When asked how you decide which jobs belong to Y and which ones belong to you, you responded that, "If it is a for profit opportunity, Y works as an independent contractor."

Your board meeting minutes discussed establishing salaries for officers and employees. When we asked about this you responded, "We do not have salaries, we have % of income." We asked for more information about this and you said, "I have not compensated board members. The agreement is 1% of profits. (net revenue)." We asked again for clarification and you said that the one percent of income over operating costs has not been achieved so no income has been paid to board members to date.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation 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) provides 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(e)(1) provides that an organization may meet the requirements of Section 501(c)(3) 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).

Rev. Rul. 54-305, 1954-2 C.B. 127, concerns an organization whose purposes are to secure for hospitals and other charitable institutions the advantages of cooperation in establishing uniform standards as to quality and kind of supplies and the purchasing of the same, and to promote the economical and efficient administration of hospitals and other institution and to establish and maintain a central purchasing agency. Any hospital or similar institution not conducted for profit and engaged in charitable work is eligible for membership. The organization's income is derived from dues, cash discounts on purchases for members, and service charges. The ruling states that the activities of the organization - the purchase of supplies and the performance of related services for the several otherwise unrelated charitable organizations that constitute its membership - cannot be termed charitable, but are ordinary business activities. The ruling holds that a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of otherwise unrelated members who are exempt from federal income tax as charitable organizations is engaged in business

activities which would be unrelated activities if carried on by any one of the tax-exempt organizations served. Therefore, the organization is not entitled to exemption under Section 101 (the precursor of Section 501(c)(3)).

Rev. Rul. 69-528, 1969-2 C.B. 127, concerns an organization formed to provide investment services for a fee exclusively to organizations exempt under Section 501(c)(3) of the Code. The ruling states that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit. If the services were regularly provided by one tax-exempt organization for other tax-exempt organizations, such activity would constitute unrelated trade or business. Thus, the ruling holds that the organization is not described in Section 501(c)(3) since it is regularly carrying on the business of providing investment services that would be unrelated trade or business if carried on by any of the tax-exempt organization on whose behalf it operates.

Rev. Rul. 71-529, 1971-2 C.B. 234, states that nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a fee substantially below the cost of providing such service, qualifies for exemption under code Section 501(c)(3).

Rev. Rul. 72-369, 1972-2 C.B. 245, concerns an organization formed to provide managerial and consulting services for nonprofit organizations exempt under Section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The ruling states 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. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. Accordingly, the ruling holds that the organization's activities are not charitable and, therefore, the organization does not qualify for exemption under Section 501(c)(3).

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

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

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

Application of law

A ruling on exempt status is based solely on facts and representations in the administrative file. You have provided vague and sometimes contradictory information about your activities. You have not established that you meet the requirements of Section 501(c)(3) of the Code.

As stated in Treas. Reg. 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3) of the Code. You provide consulting services to other non-profit organizations for a fee. Throughout your application you intertwined your activities with those of Y's

independent contractor activities. You do not meet the operational test because you are not operating exclusively for one or more exempt purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Section 1.501(c)(3)-1(e) infers that an organization that is organized and operated for the primary purpose of carrying on an unrelated trade or business does not meet the requirements of Section 501(c)(3) of the Code. This principle is illustrated in Rev. Rul. 54-305. You are providing consulting services for a fee to other non-profit organizations. You are engaged solely in such activities would be deemed organized and operated for the primary purpose of carrying on an unrelated trade or business, and, consequently, would fail to meet the requirements of Section 501(c)(3).

Your consulting services are like those described in Rev. Rul. 69-528. This ruling held that if a tax-exempt organization provides investment services for a fee to another unrelated tax-exempt organization, such activity would constitute an unrelated trade or business. Thus, it was reasoned that an organization formed for the sole purpose of providing such services is not described in Section 501(c)(3) of the Code because it is organized and operated for the primary purpose of carrying on an unrelated trade or business.

Throughout the application process you continued to confuse the consulting services that Y provides as an independent contractor with your activities. It does not appear that the services you provide are any different from those that Y provides as an independent contractor. You are like the organization described in Rev. Rul. 72-369 rather than Rev. Rul. 71-529. You do not qualify for exemption under Section 501(c)(3) of the Code because the furnishing of commercially-available services at cost is insufficient to establish the activity as charitable.

Even if we assume that your activities were not those similar to commercially available services, where we have required details, you have provided vague responses to our inquires. You have not submitted sufficient information establishing you are operated exclusively for Section 501(c)(3) purposes. See Universal Life Church, La Verdad, and Ohio Disability Association. Not only were your responses to our inquiries lacking clarity or detail, but they often pertained to Y's activities as an independent contractor. This was affirmed when you said that Y is confused as how to distinguish between monies earned as an independent contractor and your President. Therefore, you have not established that you are exempt from taxation as required by Section 501(c)(3).

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. While you did respond to our information requests, your responses were vague and often contradictory or confusing. You are unable to distinguish Y's consulting activities from your own. Therefore, you are not operating exclusively for exempt purposes as described in Section 501(c)(3) of the Code.

Conclusion

Based on the information submitted, you have provided unclear and contradictory information showing that you are operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income tax regulations. Therefore, based on the information provided in your administrative record, you fail to 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892