



Department of the Treasury
Internal Revenue Service
Appeals Office

Date: APR 25 2019

Person to contact:
Name:
Employee ID number:
Telephone:
Fax:
Hours:
Employer ID number:

Uniform issue list (UIL):
501.03-05, 501.03-30,
501.33-00, 501.36-01

Number: 201929021
Release Date: 7/19/2019

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) of the Code.

We made the adverse determination for the following reasons:

You have not demonstrated that you are organized and operated exclusively for an exempt purpose as described by I.R.C. § 501(c)(3).

You do not meet the organizational test under Treas. Reg. §1.501(c)(3)-1(b)(1) because your Articles of Incorporation of a General Stock Corporation do not limit the purpose of your organization to one or more exempt purposes and it expressly empowers the organization to engage in business activities under the General Corporation Law of California.

You do not meet the operational test under Treas. Reg. §1.501(c)(3)-1(c)(1) because your commission-based real estate activities are more than an insubstantial part of your activities and do not further an exempt purpose.

Under Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii), an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. You operated for the benefit of the private interest of your director by engaging individuals for employment as realtors.

Contributions to your organization are not deductible under Section 170 of the Code.

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 Section 6110 of the Code after deleting certain identifying information. We 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 can file an action for declaratory judgment under the provisions of Section 7428 of the Code in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- 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	US Court of Federal Claims	US District Court for the District of Columbia
400 Second Street, NW Washington, DC 20217	717 Madison Place, NW Washington, DC 20005	333 Constitution Avenue, NW Washington, DC 20001

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

Please refer to the enclosed Publication 892, How to Appeal 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. 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 questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosures:
Publication 892

cc:



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

Date: APR 25 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

T = State
U = Date
V = Individual
W = Company

UIL:

501.03-05
501.03-30
501.33-00
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.
- Do you meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons described below.

Facts

You formed as a general stock corporation in the state of T on U. Your purpose is to engage in any lawful act or activity for which a corporation may be organized under state law. You are authorized to issue shares of stock. You do not have Bylaws. V is your sole employee and board member.

You did not provide a description of your activities with your application. We asked for you to provide a detailed description of your activities and you simply stated that you are a "residential real estate broker/association" and a "mentor protégé program (apprentice program)." The participants in your programs are:

- V - Broker Associate/Salesman
- W - Sponsor - Real estate brokerage
- The public - Buyers and sellers of residential real estate, and
- An apprentice - No apprentices in the past or present but in the future when profitable.

Regarding when or how often your activities occur, you said your activities are based on sales. Sales are driven through weekly scheduled active and passive marketing activities. These “activities are spent working with the community and are not always profitable.” V works full time conducting the activities needed to make sales and move up to the next level in your “real estate business.” You hope to become profitable.

The markets you will serve include people who want to move, people with resources to move, and people forced to move. You will advertise your services through direct marketing (door knocking), referrals, telemarketing, and advertising. You said that sellers will enjoy a full-service brokerage with a market-leading real estate firm. You typically charge between two and six percent of the sales price for your services.

As part of your application, you submitted your Business Plan. Your Business Plan describes V’s goal to work full time as a real estate agent at W. It also includes details about your operations with V as your sole proprietor while he currently has an independent contractor agreement with W. The plan includes, in part, expected start-up expenses, services offered, target markets, service business analysis, competition and buying patterns, marketing strategy, sales strategy, sales forecast, personnel plan, and financial plan for your real estate business venture. You will promote the use of the Multiple Listing Service (“MLS”) and publications to buy or sell homes. You work with W to target consumers, employees, and retirees to promote the sales of their homes. You are aiming to better your local economy by creating an alliance to promote the use of the real estate investment in the community.

Your Business Plan also states that you are a sole proprietorship founded by V. You said that “tough economic times depress my ability to invest my own money into production of RE sales without paying soaring opportunity costs.” You plan to turn government stimulus into a training/apprentice program. The use of grant funds toward specified elements should advance the apprentice real estate practice and operations. V will work inside the community creating a need for the real estate apprentice program which will allow training, advancement, and community development, which lessens the burdens of government.

You intend to obtain a project grant to help fund your activities initially. Your expenses include MLS/Realtor fees, meeting place expenses, office supplies, software and yard signs. In the future, expenses will be financed through revenue generated through commissions on successfully closed real estate transactions for buyers and sellers. As customers grow the commissions collected will fully pay for the rent and other expenses.

Law

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides 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 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 organizing document limits the purposes of such organization to one or more exempt purposes and does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. Section 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, the organization must establish that it is not organized or operated for the benefit of private interests such individuals.

Rev. Rul. 71-395, 1971-2 C.B. 228, states that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

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 American Institute for Economic Research v. United States, 157 Ct. Cl. 548, 302 F.2d 934 (1962), the Court considered the status of an organization that sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court concluded that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), the Fourth Circuit held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Court stated that free or below cost service is only one of several factors to consider in making a determination. Others include the particular manner in which the organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits. All of these must be considered, for no single factor alone is determinative. The Court concluded that the petitioner was not an organization described in Section 501(c)(3) because its primary purpose was neither educational, scientific, nor charitable, but rather commercial.

In Salvation Navy, Inc. v. Commissioner of Internal Revenue, T.C. Memo 2002-275 (2002), the Tax Court found that one of the reasons why the organization did not qualify for exemption was because it could not prove that it was not organized to serve the private interests of its founder. The court found that the affairs of the organization and the individual in question were irretrievably intertwined, and that the benefits the individual sought to obtain via a determination letter would have inured to the individual himself.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the court laid out the factors for determining whether an organization's activity is of a commercial nature. It said, "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...whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations."

Application of law

To meet the requirements of Section 501(c)(3) of the Code, an organization must satisfy both the organizational and operational tests as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You are formed as a for-profit corporation with stock and you conduct substantial non-exempt real estate activities. As a result, you have satisfied neither the organizational nor the operational test.

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) because your Articles of Incorporation are those of a for-profit entity with stock which lack a purpose clause limiting your activities to those described in Section 501(c)(3) of the Code.

You are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are engaged in substantial non-exempt activities. Specifically, you provide real estate services for a fee identical to those provided by other for-profit real estate agencies.

To meet the requirements of Treas. Reg. Sections 1.501(c)(3)-1(c)(2) and 1.501(c)(3)-1(d)(1)(ii), you must serve a public interest rather than a private interest. You are operating for the private interests of your founder. You intend to get grants to help get his real estate business off the ground. Like the organizations described in Rev. Rul. 71-395 and Old Dominion Box Co., you are operating for the benefit of a private individual, which constitutes a substantial non-exempt purpose and precludes you from exemption under Section 501(c)(3) of the Code.

Like the organization described in Better Business Bureau of Washington, D.C., Inc., you have a substantial non-exempt purpose. A single non-exempt purpose, if substantial in nature, will destroy a claim for exemption under Section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes. As in American Institute for Economic Research, you have a significant non-exempt purpose of selling real estate, which is not incidental to any educational or charitable purpose, which precludes you from exemption.

Much like the organization described in Salvation Navy, Inc., your activities are irretrievably intertwined with the personal interests of your founder. You call yourself a sole proprietorship and discuss your founder's need to get grants to get his business off the ground. You were formed to further the substantial private interests of your founder, which precludes exemption under Section 501(c)(3) of the Code.

Your operations are similar to those described in B.S.W. Group, Inc. and Airlie Foundation, as your services are competing with and indistinguishable from other non-exempt, for-profit real estate companies. You will buy and sell houses to any interested individual and charge a typical real estate fee. You will spend your time conducting marketing activities and you will use the MLS to buy and sell homes, as do most real estate professionals. Your real estate activities are substantial and further non-exempt purposes. Accordingly, you fail to qualify for exemption under Section 501(c)(3) of the Code.

Conclusion

You are precluded from exemption because you are formed as a for-profit corporation and you have a substantial non-exempt purpose. You are also operating for the substantial private benefit of your sole board member/founder. You fail both the organizational and operational tests. Therefore, you fail to qualify for exemption 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892