



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

Release Number: **201940011**
Release Date: **10/4/2019**
UIL Code: 501.00-00, 501.03-00,
501.03-30, 501.33-00, 501.36-00

Date:
July 9, 2019
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:
May 15, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

S = Date
T = State
V = Individual
W = LLC
X = Individual

UIL:

501.00-00
501.03-00
501.03-30
501.33-00
501.36-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons 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 stated below.

Facts

You were formed as a corporation on S in the state of T. Your Articles of Incorporation are silent regarding your purpose. Upon dissolution your assets shall be distributed to other like-minded nonprofits, as directed by your Board of Directors.

Your Bylaws state you provide the following services to healthcare companies: billing, legal, accounting, human resources, personnel, and support staffing. You also provide spiritual, emotional, and physical support services to patients.

You are a successor to a for-profit corporation of the same name. Two individuals, V and X, each owned percent of the predecessor organization. V and X are your sole board members/directors.

Your activities are divided amongst three categories: medical services, managerial/administrative services, and ministry services. Each of these services are described in detail below.

Medical Services

You provide an array of medical services to healthcare companies. You contract with for-profit medical companies and provide medical services to patients recently discharged from nursing homes and hospitals. You have a medical staff of 1 full-time employees and 1 part-time employee. The medical staff sees patients in their homes. The specific services your medical staff provides includes reconciliation of medication, safety check of home, confirmation that diagnostic tests have been performed and/or scheduled, review of test results, answer patient questions, address patient concerns, educate the family and/or caregiver, and visit patients in hospitals to explain your services.

Managerial/Administrative Services

You provide managerial/administrative services to healthcare companies. You have an administrative staff of 1 full-time employees, 1 part-time employees, 1 contractor, 1 part-time volunteer, and 1 full-time volunteer. Your full-time volunteer is X, your founder and board member. Although you have stated that X is a full-time volunteer, she receives compensation as a board member. The specific managerial/administrative services your staff provides includes:

- performing accounting functions
- performing human resource functions
- purchasing medical and office supplies
- developing and revising all necessary policies and operating procedures
- establishing and maintaining credit and billing and collection policies
- establishing and implementing guidelines for the recruitment, selection, hiring, firing, compensation, terms, conditions, obligations and privileges of employment or engagement
- data entry
- contracting with vendors
- supporting staff for medical practices, and
- other additional work that is requested by the client.

Ministry Services

Your ministry team consists of 1 full-time employee and 1 part-time volunteer. Your ministry team counsels patients and coordinates all of the physical support you provide. For example, you help provide transportation of patients to appointments through ride-hailing services or by transporting them yourself. You work with another non-profit organization to have food delivered to patients. You coordinate interpreters for the deaf. You also provide prayer and emotional support for the patients and their families. You help patients obtain medical supplies/equipment not covered by their insurance.

You said that all three of your activities are all intertwined and do not exist without the others. Each activity can be estimated to take 33 percent of your time.

You submitted a copy of a Management Services Agreement between you and W, a for-profit entity. You indicated that X is a Member of W. You said that W does not have any employees, but that all of their services are contracted to and performed by you. The agreement was approved by V and X for both you and as a representative of W. The agreement is effective for 1 years. Per the agreement, you will provide the medical

and administrative services discussed above. You share office space with W. You will lease office furniture, furnishings, and equipment from W.

The fees for your services are based on direct costs incurred on behalf of the medical practices plus the lesser of a percentage of the customers net revenue or a percentage of the practice's net revenue less refunds/rebates owed, costs and expenses of clinical personnel, office space, monthly furniture and equipment lease. You said that your managerial and medical services provide the revenue to fund your ministerial services. You also said, "Without the revenue, we cannot provide the ministry, and with out [sic] the ministry we are just another medical provider."

All of your revenue comes from your billing and managerial services. You said that if you are granted Section 501(c)(3) status that you would like to pursue donations and grants.

Law

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

Treasury Regulation Section 1.501(a)-1(c) defines the words "private shareholder or individual" in Section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Treas. Reg. 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, 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" of 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.

In Revenue Ruling 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services for Section 501(c)(3) organizations to improve the administration of their charitable programs. The organization enters into agreements with unrelated Section 501(c)(3) organizations to furnish managerial and consulting services on a cost basis. Providing 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 to 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.

In Rev. Rul. 73-127, 1973-1 C.B. 221, it was found that a nonprofit organization that operates a cut-price retail grocery outlet and allocates a small portion of its earnings to provide on-the-job training the hard-core unemployed does not qualify for exemption from income tax.

In Rev. Rul. 76-94, 1976-1 C.B. 171, it was held that an exempt organization's operation of a retail grocery store as part of its therapeutic program for emotionally disturbed adolescents, almost fully staffed by the adolescents, and on a scale no larger than was reasonably necessary for the performance of the organization's exempt functions, was not unrelated trade or business.

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 (1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It 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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the organization's sole activity was to offer consulting services on rural-related policy and program development to limited-resource organizations for a fee. The organization did not limit its clientele to organizations which were themselves organizations described under Section 501(c)(3) of the Code, but only to organizations which were either nonprofit or exempt. The fees charged were set at or close to cost but were not less than its full cost of providing its services. Its only source of income was from fees for services, and those fees were set high enough to recoup all projected costs and to produce a net profit. It failed to show it would not be in competition with commercial enterprises. The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Court held that the organization's primary purpose was not educational, scientific, or charitable, but rather was the conduct of an ordinary commercial consulting enterprise in competition with other commercial firms. The organization was not operated exclusively for tax-exempt purposes within the meaning of Section 501(c)(3).

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

distinguishable from commercial adoption agency.” The court found that the adoption agency's primary goal was furthering of a “business purpose” rather than the advancement of an educational or a charitable purpose.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. Memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church does not qualify under Section 501(c)(3) of the Code. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including:

- a. The organization's operations were presumptively commercial;
- b. The organization competed directly with other restaurants and food stores;
- c. The organization used profit-making pricing formulas common in the retail food business;
- d. The organization engaged in a substantial amount of advertising;
- e. The organization's hours of operation were competitive with other commercial enterprises; and
- f. The organization lacked plans to solicit donations.

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

Application of law

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3).

Organizational Test

You do not meet the organizational test because your Articles of Incorporation do not limit your purposes to one or more exempt purposes as required in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Therefore, you are not exempt under Section 501(c)(3) of the Code.

Operational Test

You are not operating per Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you operate for a substantial non-exempt purpose. The majority of your time and funds are spent by providing for-profit medical companies with medical, managerial, and administrative services. You charge ordinary fees to cover your expenses.

Your activities provide a direct benefit to the for-profit entity, W. The Management Services Agreement between you and W will be in place for at least years. W's member, X, is one of your founders. X will be compensated for services as your board member. Charitable organizations cannot be operated to benefit insiders such as officers or directors as indicated in Treas. Reg. Section 1.501(c)(3)-1(c)(2). The words “private shareholder or individuals” as used in Section 501 refer to persons having a personal and private interest in the activities of the organization as defined under Treas. Reg. Section. 1.501(a)-1(c). Your activities and expenses supporting the activities of W benefit the private interests of your founders.

You are very similar to the organization described in Revenue Ruling 72-369, which states that providing services to other exempt organizations at cost is not sufficient to characterize the activity as charitable due to the lack of a donative element. You are also like the organization in Rev. Rul. 73-127. Several of your activities, such as prayer and emotional support to patients, are religious and charitable. However, your primary activities, which include managing the administrative and medical services of a for-profit entity for a fee, do not fulfill a charitable, educational, or religious purpose as required by Section 501(c)(3) of the Code.

You are dissimilar the organization described in Rev. Rul. 76-94 because the operation of your medical, managerial, and administrative services are your primary functions and your charitable and religious programs are incidental to your non-exempt activities.

As held in Better Business Bureau of Washington, D.C., Inc., a single non-exempt purpose, if substantial, will preclude tax exemption under Section 501(c)(3) of the Code. The provision of medical, managerial, and administrative services are your primary activities. These activities further substantial non-exempt purposes. Therefore, you are not operating exclusively for an exempt purpose and are not exempt under Section 501(c)(3).

You are similar to the organization described in the American Institute for Economic Research. You provide services to for-profit medical practices who are in competition with other for-profit medical practices. Your primary source of revenue is fees for services. Like the organization in this case, you have a significant non-exempt purpose which is not incidental to your exempt purposes.

Like the organization described in B.S.W. Group, Inc., you conduct services in competition with other commercial firms. Like the organization in that ruling, your primary purpose is not educational, scientific, or charitable. Therefore, you are not operated exclusively for tax-exempt purposes within the meaning of Section 501(c)(3).

You are similar to the organization described in Easter House because the provision of services for a fee, without more, does not constitute an exempt purpose. Your activities are not carried out exclusively to accomplish a tax-exempt purpose under Section 501(c)(3) of the Code.

You are like the organization described in Living Faith, Inc., where the court found that the organization was exhibiting a substantial nonexempt purpose. Your provision of services for a fee is in direct competition with other for-profit providers of similar services. You did not indicate that you offer below-cost services to your clients. The financial data you submitted showed that all of your income is from fees for services rendered. You are not currently supported by gifts, grants and charitable contributions from the general public. You are operated in a manner indistinguishable from a commercial enterprise. In fact, you were previously operated as a for-profit business. By operating in the manner described, you are furthering a substantial non-exempt purpose and fail to qualify for exemption under Section 501(c)(3) of the Code.

You are operated for a substantial non-exempt purpose similar to the organization described in Airlie Foundation. Your provision of medical, managerial, and administrative services for a fee directly competes with other providers of similar services. Like an ordinary business, your services are generally available to any individual or organization willing to pay your fees.

Conclusion

Based on the facts and information submitted, you fail both the organizational and operational tests. Your Articles of Incorporation are silent regarding your purposes, causing you to fail the organizational test. Your activities further substantial non-exempt purposes. Any charitable activities you conduct are incidental to your overall non-exempt purposes. You also serve the private interests of your board members, as owners of W, rather than public interests. Accordingly, you do not qualify for exemption as an organization described in Section 501(c)(3) of the Code.

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.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the

law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (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 if 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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements