



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

Release Number: **201944016**
Release Date: 11/1/2019
UIL: **501.35-00, 501.36-01, 501.33-00**

Date:
August 6, 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:
June 4, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Incorporation date
C = State
D = Proprietary training materials
E = Proprietary application software

UIL:

501.35-00
501.36-01
501.33-00

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.

Facts

You were incorporated on B in the state of C. The specific purpose for which were formed is to "promote the development of, public access to, and adoption of D and E within the meaning of Internal Revenue Code section 501(c)(3)."

You own the intellectual property rights to D and E. D and E will facilitate creative engagement of people with diverse cultures, ideologies, experiences and expertise in decision-making for the benefit of their communities. You will make D and E available to the public in a non-commercial version and a commercial version.

You will charge no fee for non-commercial, non-derivative works licenses to organizations recognized by the Internal Revenue Service as a state/local/Indian tribal government agency or as a public instrumentality or exempt under Section 501(c)(3). You will also provide free training in utilizing the licensed application software and free support services to these non-commercial users. The non-commercial version (NCV) is available only on-line as a Software-as-a-Service solution and cannot be customized.

Commercial, derivative works licensees will pay you fees based on current commercial standards and practices. The CV is available only as downloadable form; is available to anyone for a licensing fee; and can be customized. The licensees will use the solution for their own internal or commercial purposes. You will teach

and engage third party service providers in the use of E so they can download, install and deploy the CV on their customers' computing infrastructure as well as provide support services to their customers. These service providers will normally be professional community engagement facilitators. You have not provided a description of the support the service providers will furnish, but the implication is that it will include facilitation services. You have not indicated that any portion of your gross receipts will consist of payments for such training, mentioning only revenue from licensing fees.

An organization that is not eligible to use the NCV or needs to customize the software can purchase the license from you. Your estimated revenue comes primarily from gifts, grants and contributions but estimated gross receipts from CV licensing are also substantial, exceeding percent of your total revenue. You aver that you do not intend to promote the CV but you have not provided the percentages of your resources and time that will be spent on the CV. The annual licensing fee for the sale of your CV ranges from to percent of annual gross receipts. Expenses include compensation, occupancy and professional fees.

You provided examples illustrating how an organization might use the NCV and the CV. In the NCV example, a school district could reach out to various community stakeholders (parents, students, teachers, volunteers, school employees, community members) to secure their input in an upcoming budget cycle. An on-line community discussion would be initiated through invitations which is hosted by your software. A video or other presentation could be made part of the online discussion which may go on for weeks or even months. The software gathers and analyzes all comments. The software also includes discussion mechanisms which respond to vitriolic tones or assertions of suspicious facts. The comments are not censored, but the software invites participants to rephrase their comment or provide support for their assertion. The software uses artificial intelligence to cluster on-line comments into groups by common topics/perspectives. Discussion participants can see what clusters have emerged and see the comments/summary. Experts could be asked to join the discussion by summarizing relevant research findings or posing more sophisticated questions to participants. The software may automatically contact participants during the discussion period for various reasons which enhance the conversation and feedback. When the online conversation is closed, the school district can invite interested contributors to meet in person to continue the discussion. You provide a half- to full-day training to participants comfortable in leading groups who act as facilitators of small discussion groups. The software captures the online discussion as well as the results of the group meetings.

You maintain a website that contains basic information about your programs. The website did not contain advertising or promotional materials.

Law

Section 501(c)(3) of the Code exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, to be exempt as an organization described in Sec. 501(c)(3), 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 or operational test, it is not exempt.

Treas. Reg. Sec. 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 which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Sec. 1.501(c)(3)-1(b)(1)(ii) provides that, to meet the organizational test, the organization's purposes must be specified in its articles. They may be as broad as, or more specific than, the purposes stated in Section 501(c)(3).

Treas. Reg. Sec. 1.501(c)(3)-1(b)(1)(iv) provides that in no case an organization shall be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3).

Treas. Reg. Sec. 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 Sec. 501(c)(3). 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. Sec. 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 subdivision, 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.

Treas. Reg. Sec. 1.501(c)(3)-1(d)(2) includes "lessening of the burdens of government" in the definition of the term "charitable."

Treas. Reg. Sec. 1.501(c)(3)-1(d)(3)(i) defines the term educational as relating to instruction of the individual for the purpose of improving or developing his capabilities, or instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. Sec. 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of Section 501(c)(3) even though it operates a trade or business as a substantial part of its activities, unless its primary purpose is carrying on of a trade or business that does not further charitable purposes.

Rev. Rul. 65-1, 1965-1 C.B. 226, determined that an organization which promotes and fosters the development and design of machinery in connection with a commercial operation and which has the power to sell, assign, and grant licenses with respect to its copyrights, trademarks, trade names, or patent rights was not exempt under § 501(c)(3). Specifically, the development of a new machine, the patents of which may be licensed on a restrictive basis to selected manufacturers, is directed toward benefiting those particular manufacturers and any benefit to the public must be considered indirect. Under these circumstances the organization cannot be considered as operating for a public purpose.

Rev. Rul. 70-79, 1970-1 C.B. 127 describes an organization that assisted local governments of a metropolitan area by researching solutions for common regional problems, such as water and air pollution, waste disposal, water supply, and transportation, that was operated exclusively for the charitable purpose of relieving the

burden of government. The chief elected officers of the local jurisdictions constituted the membership of the organization. Receipts included assessments on the local jurisdictions. The interrelationship between the local governments and the organization indicates the existence of a burden of government in that the organization's membership was composed totally of government officials; persons appointed by the local governments involved. The funding of the organization from the government assessments indicates a burden of government. Developing regional plans and policies for regional problems is an activity normally conducted by governmental units and indicates a burden of the government.

A Rev. Rul. 85-1, 1985-1 C.B. 177, states that an activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers the activities of the organization to be its burden.

Rev. Rul. 85-2, 1985-2 C.B. 178, states that an organization is lessening the burdens of government if its activities are activities that a governmental unit considers to be its burdens, and the activities actually lessen such governmental burden. The organization must demonstrate that a governmental unit considers the organization to be acting on the government's behalf, thereby actually freeing up government assets — human, material, and fiscal — that would otherwise have to be devoted to the particular activity. This determination is based on facts and circumstances.

In Forest Press Inc. v. Commissioner, 22 T.C. 265 (1954), the Tax Court determined that an organization devoted to developing and propagating the use of the Dewey Decimal Classification System and Related Index was a charitable organization. The system is a method for indexing any collection of books. Forest Press' primary activity was the ongoing development of the system, which required continuous revision. By the time the organization was formed, the System had been adopted by more than 90 per cent of the libraries in the United States to classify and index their collections and was in use in 42 countries. Thus, the court concluded that the System was an important aid to education and research and not a commercial enterprise.

Application of law

You meet neither the organizational not the operational test as required by Section 501(c)(3) of the Code and Treas. Reg. Sec. 1.501(c)(3)-1(a)(1).

You do not meet the organizational test of Treas. Reg. Sec. 1.501(c)(3)-1(b)(1)(i) and (ii), because you cannot be considered to be organized exclusively for one or more exempt purposes, the purposes stated in your articles of incorporation -- promoting the development of, public access to, and adoption of D and E -- being of the kind expressly addressed by Treas. Reg. Sec. 1.501(c)(3)-1(b)(1)(iv), namely, broader than the purposes specified in section 501(c)(3). Adding the words "within the meaning of Section 501(c)(3)" cannot cure this unacceptable statement of purpose, since the specific purposes named are inherently incompatible with Section 501(c)(3) purposes.

You do not meet the operational test of Treas. Reg. Sec. 1.501(c)(3)-1(c)(1), because you do not engage primarily in activities which accomplish one or more of such exempt purposes specified in Sec. 501(c)(3). You do not meet the operational test as required by Treas. Reg. Sec. 1.501(c)(3)-1(a)(1), because you cannot be regarded as "operated exclusively" for such purposes as stipulated by Treas. Reg. Sec. 1.501(c)(3)-1(c)(1).

Based on the information you have provided we are unable to establish whether the CV or the NCV is your primary activity. However, the CV clearly of a commercial nature – you yourself having characterized it as as

such – that is, a business described in Treas. Reg. Sec. 1.501(c)(3)-1(e)(1) that does not further any charitable purpose. If it is your primary activity, for that reason alone you do not meet the operational test.

The NCV, however, also accomplishes no exempt purposes specified in Sec. 501(c)(3). The provision of free services to other organizations, whether for profit, exempt or governmental is not per se in furtherance of any exempt purpose within the meaning of Section 501(c)(3). The NCV does not further charitable purposes within the meaning of Treas. Reg. Sec. 1.501(c)(3)-1(d)(2) by relieving the burdens of government because it does not meet the requirements of Rev. Rulings 85-1 and 85-2 that its facilitation services should be activities that a governmental unit considers to be its burdens, there being no objective manifestation by a governmental unit that it considers your facilitation activities to be its burden, and actually lessens such governmental burdens. Although you and the organization described in Rev. Rul. 70-79 are superficially similar in that both focus on problem-solving, you otherwise bear little resemblance to the organization in the Revenue Ruling.

Your facilitation services to organizations exempt under Section 501(c)(3) are also not necessarily charitable as indirectly supporting them in carrying out their charitable purposes. Nor are they educational, as Section 1.501(c)(3)-1(d)(3)(i) defines the term, because they neither instruct the individual for the purpose of improving or developing his capabilities, nor instruct the public on subjects useful to the individual and beneficial to the community.

You also cannot be regarded as "operated exclusively" for such purposes because you do not meet the requirement of Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(ii) that you serve a public rather than a private interest because you confer a substantial, non-incidental benefit on private interests.

The NCV and CV programs are tools to facilitate discussion of problems which affect the entities that use them. The entities to which you license the CV require the services of third-party service providers whom you train to download, install and deploy the CV on their customers' computing infrastructure and provide support services. You provide this training to them gratis, thereby conferring on them a substantial nonincidental private benefit.

Like the organization in Rev. Rul. 65-1, which restricted licensing of its patents to selected manufacturers, your training of third-party service providers to render necessary services and support to the for-profit licensees' commercial clients or the licensees themselves is directed toward benefiting these particular private businesses rather than the public.

You are distinguishable from the organization in Forest Press Inc. That organization developed and disseminated licenses to use its intellectual property, as you do, but the dissemination of the Dewey Decimal system served the public interest exclusively, all benefits to private persons being incidental.

Conclusion

Based on the above, we have determined that you do not meet the requirements for exemption under Section 501(c)(3) because you are neither organized nor operated exclusively for one or more exempt purposes within the meaning of Section 501(c)(3).

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