

Internal Revenue Service
Appeals Office
300 N. Los Angeles Street
MS LA-8000 Room 3054
Los Angeles, CA 90012

Department of the Treasury

Taxpayer Identification Number:
C

Date: SEP 26 2019

Person to Contact:

Employee ID Number: ****
Tel: ****
Fax: ****

Number: **201951015**
Release Date: 12/20/2019

UIL Index:
501.03-00
501.33-00
501.35-00

A

B

Redaction legend:

A= taxpayer name
B= taxpayer address
C= taxpayer identification number

CERTIFIED

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).

We made the adverse determination for the following reason(s):

You have not demonstrated that you are organized and operated exclusively for charitable, educational, or other purposes and that no part of your net earnings inure to the benefit of private shareholders or individuals as required by section 501(c)(3) of the Internal Revenue Code. Treas. Reg. § 1.501(c)(3)-1(a)(1). You appear to be organized and operated primarily for the purpose of providing a soccer league job referral service for your affiliated referees in the local area. You have not established that your operations serve public rather than private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

Contributions to your organization are not deductible under Code § 170.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return, or 1041, U.S. Income Tax Return for Estates and Trusts. 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 Code section 6110 after deleting certain identifying information. We have 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 may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- 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
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
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.

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. Please contact the Taxpayer Advocate for the IRS office that issued this letter. 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 any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Appeals Team Manager



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

Date: June 12, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = number

x dollars = amount

y dollars = amount

UIL:

501.03-00

501.33-00

501.35-00

Dear _____ :

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

Issues

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

Facts

You were incorporated on B in the State of C.

The specific purpose stated in your Articles of Incorporation indicates that you are organized to support, advance and sponsor amateur athletics and to carry on other charitable and educational activities associated by this goal as allowed by law.

Your bylaws state that your purpose is to promote excellence in competition, sporting behavior, and safety in the sport of soccer by recruiting, training, mentoring, and scheduling licensed referees and by providing advice and guidance for youth and adult soccer leagues and organizations located within your geographic area. Your goals are to ensure that the youth soccer games in the area are officiated fairly and that the players are taught the values of discipline, work ethic, positive attitude, and teamwork through adherence to the rules of the game.

Your activities consist of scheduling certified soccer referees to youth and competitive soccer leagues in your area to officiate soccer games including recreational leagues to the highest levels of competitive soccer associations. You have no employees or members but you generally have a pool of approximately D certified referee independent contractors available to referee games in your geographic area.

For the certified referees affiliated with you, you negotiate and then maintain two-year contracts with several local soccer leagues ranging from recreational leagues to the highest level of competition in your area to provide certified referees for all scheduled games. During these negotiations, compensation paid to referees and mentors on a per-game and per-hour basis is set by using compensation data obtained from other objective sources to ensure that the compensation paid is reasonable and fair. Also incorporated in the rates are administrative expenses such as the cost of the scheduling software, the hourly cost of providing referees, and the costs incidental to conducting training for referees, coaches, and league officials. Currently, you pay these referees a flat rate for each game worked, and the pay increases with the level of competition, such that a referee is paid slightly more per game for an upper level competitive game than a lower level recreation league game. For example, the pay scale ranges from x dollars per hour for those leagues under eight years of age and up to y dollars per hour for those leagues under nineteen years old.

Another activity you engage in is periodically providing paid certified referee mentors on an hourly basis for their on-field services in mentoring the referees who work certain soccer games. The primary purpose of mentoring is to improve the referees' skills in officiating games. Each such mentor is paid x dollars per hour for any mentoring duties performed.

When the soccer leagues provide the game schedules to you, one of your board members who is licensed through the national association assigns officials to each game, based on the availability of the referee and his or her qualification level. You subscribe to a software program through the national association that matches the availability of individual referees with the needs of clubs, leagues, and tournaments in your vicinity with home you have contracted with to provide referees. The software also keeps track of all games worked by referees and hours worked by mentors. Payments to such individuals are processed every two weeks and are sent via electronic deposit to the recipient.

You have a board of directors who do not receive pay for their services as board members but may be reimbursed for out of pocket expenses related to educational programs conducted locally or regionally for referees, league officials, or team coaches. They may also be paid as independent contractors for refereeing and mentoring. Furthermore, your directors serve as referee liaisons to soccer leagues and schedule referees/mentors when needed.

To be eligible to serve as a director, all directors except one must be a referee, assessor or instructor licensed by and in good standing with the national association and in good standing as well as have been licensed for a continuous combined total of three years as a referee, assessor and/or instructor. In addition, to be eligible, a director must have served as a referee, mentor, assessor or instructor for your a for a minimum of one year and must continue to be licensed as a referee, assessor or instructor while serving on your board.

You receive no revenue from gifts, grants, and contributions. Your primary source of revenue is contract fees from the various soccer leagues and associations while your primary expenses are fees to referees for services rendered and administrative expenses.

Other activities you conduct include:

- a. Advocating on behalf of the referees to obtain safe working conditions.
- b. Training coaches and board members on the rules of the sport.

- c. Arranging for referees to donate their time for various charitable soccer games and other charitable causes.

Finally, you wrote that without a reliable source of qualified referees, these youth soccer leagues simply could not function.

Law

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable and educational purposes, among others, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

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 of the purposes specified in Section 501(c)(3). 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 an organization will not be regarded as a Section 501(c)(3) exempt organization 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 (d)(1)(ii) provides an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Revenue Ruling 61-170, 1961-1 C.B. 112., holds that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under Section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Rev. Rul. 80-215, 1980-2 CB 174 describes an organization that was formed to develop, promote, and regulate a sport for individuals under 18 years of age by organizing local and statewide competitions, promulgating rules, organizing officials, presenting seminars, distributing a newsletter, and otherwise encouraging growth of the sport qualified for exemption under Section 501(c)(3) of the Code.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under Section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under Section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures

organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical Section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." Finally, the corporation did not limit its clientele to organizations that were Section 501(c)(3) exempt organizations.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health-related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

Application of law

You are not as described in Section 501(c)(3) of the Code because you do not meet the operational test as per Treas. Reg. Section 1.501(c)(3)-1(a)(1). You are not operated exclusively for educational purposes, nor are you devoted to fostering national amateur athletic competition. You were formed to provide soccer leagues with certified referees to perform referee services for fees.

You do not meet the provisions in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operating for the non-exempt private purpose of providing employment services to a pool of about D affiliated certified referees consisting of:

- Negotiating two-year contracts with several local soccer leagues in your area specifying agreed upon hourly wages for the type of games being played,
- Scheduling appropriate games for the pools of referees depending on their level of certification,
- Collecting payment for them,
- Turning the payment over to them and then issuing them Form 1099's.

Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose because you rely on negotiated fees and then turn the money over to pay the referees. This non-exempt purpose is substantial and precludes you from exemption.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), because you are operating for the private interest of your pool of qualified referees. Negotiating contracts for their benefit, scheduling of games for them and the distribution of your income as payments indicate that your activities primarily benefit them.

You are like the organization described in Revenue Ruling 61-170. Your activities are primarily directed to arrange employment for certified referees who meet particular requirements and must maintain specific certifications. Furthermore, you are primarily governed by certified referees and certified mentors without public participation. You also maintain a pool of qualified referees. Finally, like the organization in the revenue ruling, public support is negligible because fees that you negotiate with various leagues fund your activities.

You are not similar to the organization in Rev. Rul. 80-215 because you were not formed to develop, promote, and regulate youth hockey. You were formed to provide youth hockey leagues with certified hockey referees to perform referee services for fees.

You are like the organization in Better Business Bureau v. United States because you operate for a substantial non-exempt commercial purpose. This is indicated by the fact your source of income is from contract fees for referee services and your major expenses are compensation and fees to referees for services rendered.

You are similar to the organization in B.S.W. Group, Inc. v. Commissioner, because your activities are serving a commercial rather than a Section 501(c)(3) purpose. For example, you schedule and assign referees to various games and collect the fees from the games from the various soccer leagues to pay your referees. Your only income is from negotiated fees. Like the court case, you are operating similar to a trade or business ordinarily carried on by commercial ventures.

Similar to the organization in Easter House v. U.S., you are operating for a business purpose rather than the advancement of charitable or educational activities because you are primarily providing certified soccer referees paid employment. Your only source of income is the fees you charge the various organizations for each game. By negotiating contracts for affiliated certified referees and then matching certified referees to jobs where they are qualified and paid, you are engaging in a business. Your charitable and educational activities are merely incidental to your employment service operations which, in and of itself, does not serve an exempt purpose.

Your position

You wrote that you believe you qualify under Section 501(c)(3) of the Code. You wrote there are several other local referee associations in your area with a structure and activities like your own.

You further stated that all your affiliated referees are independent contractors who determine their own availability to work games and are free to choose the leagues and/or teams for which they officiate. Referee fees are paid by the schools, leagues, and teams who use your services. Leagues, clubs, and tournaments also pay a per game fee to you to cover the cost of subscribing to and maintaining the assigning and direct deposit software, the hourly cost of providing experienced referees as on field mentors on game days, and costs incidental to conducting classroom and on field training for referees, coaches, and league officials. You also indicated that youth and adult amateur sports programs require the participation of persons to act as officials to teach the rules, enforce the rules and ensure the safety of the participants. High schools, youth soccer leagues and amateur soccer programs in your metropolitan area face the constant problem of recruiting and retaining referees to allow their programs to continue and expand. You also indicated that you recruit referees who are age twelve and older. Many referees are high school age and have neither the confidence or experience

necessary to advocate for proper working conditions and fees individually with clubs and leagues run by adults. For many teenage referees this is their first experience with managing their time, being responsible for a field full of young and energetic soccer players, and asserting themselves in the presence of sometimes intimidating adult coaches and soccer parents.

In addition, you stated that the local soccer community greatly benefits from having referees which you insure are of the highest quality to teach not only the rules of soccer, but also the values of good sportsmanship, fair play, teamwork and self-discipline. Without the services you provide, the local soccer clubs and leagues simply would not have enough highly-trained referees to work the games and tournaments they are currently accustomed to playing.

You also indicated that you contribute to the community by arranging for referees to donate their time for charity soccer games, fundraising tournaments for local soccer leagues, and games for those with developmental disabilities.

Our response to your position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3). You were formed to provide youth soccer leagues with certified referees to perform referee services for fees as discussed previously. Although you provided the names of organizations exempt under Section 501(c)(3) whose operations you believe are like yours, you have the burden of proving that you satisfy the requirements for tax exemption. Similar to the organization in Harding Hospital, Inc. v. United States, you have failed to provide enough information to prove to us that you are operating exclusively for purposes described in Section 501(c)(3). Further, determinations are based on the very facts and circumstances contained within each individual application that may vary between organizations.

Conclusion

Based on the facts and information submitted, you do not meet the operational test for exemption under Section 501(c)(3). You provide certified referees officiating assignments and receive contract fees for these placements. You then pay these fees to the referees thereby operating for their private interests. You also operate in a commercial manner because you provide an employment services for negotiated fees which also precluded you from 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 later 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892