



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **202020024**  
Release Date: 5/15/2020  
UIL: 501.30-00, 501.36-01

Date:  
2/19/2019  
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:**

12/9/2019

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = state

C = date

D = continent

E = geographic area

f dollars = amount

g dollars = amount

h dollars = amount

j dollars = amount

k dollars = amount

l dollars = amount

m dollars = amount

n dollars = amount

p dollars = amount

q dollars = amount

R = program 1

S = program 2

T = program 3

U = program 4

**UIL:**

501.30-00

501.36-01

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 IRS Section 501(c)(3)? No, for the reasons stated below.

**Facts**

You formed as a corporation on C in B. Your Articles of Incorporation state you are organized exclusively for charitable purposes, include making distributions to organizations that qualify under Internal Revenue Code Section 501(c)(3). Your purpose is to slow climate change and prevent millions more individuals from

**Letter 4034 (Rev. 11-2018)**

Catalog Number 47628K

becoming impoverished from its effects. Your activities are focused on the acceleration of clean impact technologies into the commercial market.

You help create greener economies and promote entrepreneurs by connecting entrepreneurs, customers, investors, scientists and corporations. The services you sell include economic development research and consulting projects. You design a work product for clients who request these projects. These clients include for profit and non profit entities. The work product you create belongs to your clients, who can decide whether or not to make these results public. You charge fees for these products, which are determined based on the cost of each project. Costs can include labor, travel and other out of pocket or miscellaneous expenses. Fees are often discounted based on a client's budget.

In addition to research and consulting you also may provide the following services:

- Operating a network among innovation institutions
- Helping countries develop their domestic innovation ecosystems
- Training key stakeholders on building a domestic innovation ecosystem
- Assisting cleantech entrepreneurs enter international markets
- Assisting cleantech entrepreneurs build a business in their domestic market
- Providing immersion courses for entrepreneurs who are expanding into global markets
- Sharing best practices and educating leaders/staff of impact technology innovation ecosystems
- Linking corporate partners to strategic technology solutions
- Educating government, academic and business leaders in the best practices of invention development
- Assisting emerging markets develop their own innovation hubs
- Providing entrepreneurs access to a global pipeline of customers, potential investors, and partners
- Granting investors and corporate partners access to a global pipeline of vetted investment opportunities
- Offering university scientists and professors opportunities for consulting and speaking engagements
- Allowing government and economic development agencies use of your network to access markets in D and E

Your primary source of revenue is the sale of economic development research projects, consulting projects and membership fees. You plan to expand revenue sources to include grants, participation in revenues generated from successful matches of companies with customers and investors, software services, and licensing content.

The fees for your services are projected to be as follows:

Membership.....f dollars – g dollars  
 R - Total Projects.....h dollars – j dollars  
   S 1A.....k dollars  
   S 1B.....g dollars  
   Assessment.....l dollars – m dollars  
   Strategic Plan.....l dollars (monthly)  
 Boot Camps.....n dollars (weekly)  
 T.....k dollars (weekly)  
 International Access.....k dollars (weekly)  
 U.....p dollars – q dollars

Revenues projected from city, county, state and federal sources are for ecosystem development consulting projects, mainly, for tours and training. Membership to date has been free and by invitation only; eventually you plan to charge fees.

You currently have around \_\_\_\_\_ members with basic membership with the expectation of future growth. Basic membership includes newsletters, status calls, introductions, convening events, hosting of member companies on visits, invitations to associated events and coordinating among members for projects.

Members include incubators, innovation institutions, technology parks, research institutes, think tanks, corporations, government institutions, universities and corporations. You assist members in locating, incubating, growing and expanding portfolio company solutions. You will help your members acquire mentors, advisors, coaches, and interim executives to assist in entrepreneurial creativity. You will bring together customers and companies as well as investors with opportunities.

You, with your members, select the best companies from select markets. You profile these companies and put together a technology roadshow for members. The goal of the roadshow is to secure sales, investments, and potential partners for each of the selected companies.

### **Law**

IRC Section 501(c)(3) provides for the exemption from federal income tax of 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 IRC Section 501(c)(3), 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(c)(1) provides that an organization operates exclusively for exempt purposes if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, to meet this requirement it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests.

Revenue Ruling 69-528, 1969-2 C.B. 127, describes an organization that was formed to provide investment services of a fee basis exclusively to organizations exempt under IRC Section 501(c)(3). The Service held that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Service further held that the activity would constitute an unrelated trade or business even if the services were regularly provided by one tax-exempt organization for other tax-exempt organizations.

Revenue Ruling 72-369, 1972-2 C.B. 245, found that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption, because 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 were provided at cost and solely for exempt organizations was not sufficient to characterize this activity as charitable within the meaning of IRC Section 501(c)(3). It was also found that furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

Revenue Ruling 76-366 described an association of investment clubs formed to enable members and prospective investors to make sound investments by the mutual exchange of investment information, that carries on not only educational activities, but other activities directed to the support and promotion of the economic interests of its members, did not qualify for exemption under IRC Section 501(c)(3). While some of the association's activities are educational, and of the kind that might be carried on by an organization described in Section 501(c)(3), many of the activities listed above are directed in whole or in part to the support and Promotion of the economic interests of the investment clubs that comprise its memberships. These activities are Not in furtherance of charitable and educational purposes. Further, by furnishing information to prospective investors to enable them to make sound investment, the association is serving private interests.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under IRC Section 501(c)(3) because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax court Stated: "We must agree with the Commissioner that petitioner's activities constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures.

Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7<sup>th</sup> Cir. 1991), involved an organization that operated restaurants and health food stores with the intention of furthering the religious work of the Seventh-Day Adventist Church as a health ministry. However, the Seventh Circuit held that these activities were primarily carried on for the purpose of conducting a commercial business enterprise. Therefore, the organization did not qualify for recognition of exemption under IRC Section 501(c)(3).

### **Application of Law**

You are not operated exclusively for charitable or educational purposes under IRC Section 501(c)(3) and therefore are not described under Treas. Reg. Sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) as more than an insubstantial part of your activities, specifically, providing services to entities for a fee similar to that of a commercial enterprise, are devoted to non-exempt purposes. You provide consulting and research services regarding creating ecosystems that support the development and commercialization of clean technologies to governments, nonprofits, entrepreneurs, and academic institutions. You provide recommendations on how to improve your clients or client members development capabilities. You will help your clients or client members measure their social, environmental and economic impact.

You are like the organization described in Revenue Ruling 69-528, in which the Service concluded that the organization was not tax exempt under IRC Section 501(c)(3) because it was regularly carrying on a business of providing investment services that would be an unrelated trade or business if carried on by any of the tax-exempt organizations on whose behalf it operated. The services you sell include consulting and research work; you link together other non-profits with the intention of securing funding for client members and their portfolio of companies. Your clients include individuals, for-profit entities and nonexempt organization. Your fees are often cost based per project.

You are similar to the organization in Revenue Ruling 72-36. Like this organization, you are providing consulting and technical services to unrelated organizations for a fee. Further, you give advice on specific methods of operations to client member organizations and your services are tailored to the client or client member organization. Providing these types of services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

You are similar to the organization in Revenue Ruling 76-366 in that your primary activities are to connect investors with market opportunities. You and your members select companies to work with and attempt to secure sales, investments and potential partners for these companies. Providing investment opportunities to benefit your members and these companies serves not only the private interest of these participants but serves commercial purposes that do not further charitable or educational purposes. Per Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest.

You are like the organizations described in the B.S.W. Group, Inc. v. Commissioner and Living Faith, Inc. v. Commissioner. In those the court concluded organizations conducting activities that are characteristic of a trade or business normally carried on by a for profit entity or characteristic of a commercial business enterprise did not qualify for exemption under IRC Section 501(c)(3). Your activities are commercial in that the services you provide to members are fee based, aimed at connecting members and companies with investment opportunities, and are carried on in a regular manner characteristic of a business. You promote yourself in ways that are characteristic of a commercial business. Most of your work is done specifically for a client or a client members project and as you noted, it is difficult to determine pricing due to the nature of your work. Like the organizations in these rulings you are in direct competition with others who provide consulting services for a fee.

### **Conclusion**

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. You serve the interests of your members and entrepreneurs rather than the general public. You provide consulting services in a manner similar to a commercial enterprise. Accordingly, you do not qualify for exemption as an organization described in IRC 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements