



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Number: **202041007**
Release Date: 10/9/2020

UIL Number: 501.00-00, 501.33-00, 501.35-00

Date:
July 16, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:
Name:
ID number:
Telephone:

Dear _____ :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). 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 IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Notice 437
Redacted Letter 4034
Redacted Letter 4038



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

Date:

May 8, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = Date

D = Brand

F = Name

G = LLC

w percent = Number

x percent = Number

UIL:

501.00-00

501.33-00

501.35-00

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

Facts

You were incorporated on B in the State of C. Your Articles of Incorporation state that you are organized exclusively for charitable, religious, educational, and scientific purposes.

You will train, support, and serve males in the community in the core standards and beliefs of the D Brand. You will draw males to the organization using the influence gained from promoting a character you call the F. You will conduct online and one-on-one mentoring, after school programs, school and church partnerships, community sports events, and community service missions.

To become an organization that males want to join, you will use the impact of entertainment and technology that displays an F in movies, videos, books, comics, games, and social media to gain influence and capture the attention of your target audience and the community. Once males are drawn to the F, you will use your influence to draw them to your services. You have created several websites that point to the D brand along with

several books labeled as D curriculum. You use a book authored by your founder. You are currently pursuing the creation of your first promotional video and movie which will be used to highlight the D brand and F.

G is a for-profit organization formed as an LLC. You and G were formed by your founder to operate together. You state that G is your partner organization and it is the combination of you and G that will impact the community. Both you and G are promoting the same brand and overall vision. G holds the rights to the trademarked D logo and D brand. G will help you to create movies, documentaries, comics, courses, and materials that will help promote the brand so you can reach your target audience.

Your founder serves as your President and Managing Director as well as the CEO of G. You will have an agreement with G based on specific industry standards by which designers, programmers, and contractors are paid. Your application states that you will use a third party and your conflict of interest policy to make certain your founder doesn't specifically make decisions on the personal rates paid to him by you. However, you also stated later in your application that you would use industry professionals within you and G to understand how professionals are paid for specific jobs to make sure you are not overpaying for services rendered.

Your financial information shows revenue from gifts, grants, and contributions as well as from membership fees, other income (sale of online courses and training), sales income, and group membership fees. The majority of your expenses are for salaries and program expenses. Salaries are for a marketing director, producer/production company, office help and miscellaneous contractors, and the executive director. Program expenses include marketing video production, film production, and mentoring program. Film and video production accounts for approximately w percent and mentoring accounts for approximately x percent of program expenses.

We requested more information on your relationship with G. When we asked if G has any other customers, you stated that the ultimate goal is for G to support you and all your endeavors. Additionally, you may conduct activities on behalf of G such as fund raising and promoting the F as a brand when it benefits both you and G (gaining exposure for you and gaining sales for G). G is currently finalizing an online brotherhood community and mentoring organization where it will sell its books, online courses, and mentoring services to the general public.

G is focusing on reaching as many customers and organizations it can with content intended to mentor males and gain exposure for the D brand. G will be the face of the D brand by selling products, services, and reaching males to display what an F looks like. You will be the hand of the D brand by serving the community, joining males together, and sending them into the community to display what an F does.

In regard to differentiating between you and G, you said you will make sure that those that have been asking how to support your mission can go to the website of G and select a link with your name and be directed to your website which will purposely have a different look and feel. You will also have a statement promoting G's events, products and sales that mentions a portion of all sales will go to support you and your community impact projects. You consistently refer to yourself as the "non-profit side" and "non-profit arm" while you refer to G as the "for-profit side" and "for profit arm."

You intend to begin to fundraise for the movie using revenue from G's sales of books, products, and other items. G will carry the bulk of the production while you will assist in raising funds and attracting investors to the project. You are currently unsure who will own the rights to the movie.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax 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(c)(3)-1(a)(1) states that, in order to be exempt as an organization described in Section 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 test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities that accomplish one or more such exempt purposes specified in Section 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. Section 1.501(c)(3)-1(d)(1)(ii) provides an applicant must show that it serves a public rather than a private interest and specifically 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. Section 1.501(c)(3)-1(d)(1)(iii), Example 3, describes an organization that is deemed to violate the restriction on private benefit due to their arrangement with a related for-profit entity, regardless of whether the payments to the related for-profit entity are reasonable.

Revenue Ruling 76-206, 1976-1 C.B. 154, describes a nonprofit organization formed to generate community interest in the retention of classical music programs by a local for-profit radio station by seeking program sponsors, encouraging continuation of contracts by existing sponsors, urging the public to patronize the sponsors, soliciting subscriptions to the station's program guide, and distributing materials promoting the classical music programs. The organization did not qualify for exemption from federal income tax under IRC Section 501(c)(3) because the activities tended to increase the station's revenues.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that “the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.”

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), several for-profit est organizations exerted significant indirect control over est of Hawaii, a nonprofit entity, through contractual arrangements. The Tax Court concluded that the for-profits were able to use the nonprofit as an “instrument” to further their for-profit purposes. The question for the Tax Court was not whether petitioner’s payments to the for-profits were excessive but whether the for-profits benefited substantially from petitioner’s operations. The Tax Court noted that petitioner provided a substantial private benefit to the for-profit corporations. Petitioner “was simply the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations.” Accordingly, the Tax Court held that est of Hawaii did not qualify for exemption under IRC Section 501(c)(3).

In P.L.L Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), the Tax Court held that a nonprofit organization which operated bingo games on the premises of a for-profit business while it conducted its regular business activity, the sale of food and beverages, and turned over its profits to various scholarship funds, could not be regarded as “operated exclusively” for one or more exempt purposes because more than an insubstantial part of its activities was not in furtherance of an exempt purpose. Petitioner’s activities were, in substantial part, designed to enhance the profitability of the business. Petitioner argued that its operations and the business’s were separate because the receipts from the bingo games and the receipts from food and beverage sales were accounted for separately; and that, because no cash payments were made by the petitioner to the business for either rent or wages, that all of the petitioner’s activities were for an exempt purpose. The Tax Court, however, found that the activities of the petitioner and business were so interrelated as to be functionally inseparable, regardless of the manner of accounting of receipts and disbursements.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), the United States Court of Appeals affirmed a Tax Court decision that private benefit prevented the organization from meeting the operational test under Section 501(c)(3). The critical inquiry was not whether particular contractual payments to a related for-profit organization were reasonable or excessive, but instead whether the entire enterprise was carried on in such a manner that the for-profit organization benefited substantially from the operation of the Church.

In International Postgraduate Medical Foundation v. Commissioner, TCM 1989-36 (1989), the Tax Court considered the qualification for exemption under Section 501(c)(3) of the Code of a nonprofit corporation that conducted continuing medical education tours. The Tax Court found that a substantial purpose of the petitioner was benefiting the for-profit travel agency. It concluded that: “When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively within the meaning of Section 501(c)(3), even if it furthers other exempt purposes.” A substantial purpose of the applicant’s operations was to increase the income of the for-profit travel agency.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo. 1997-424 (1997), aff’d. 82 AFTR 2d 7092, (2nd Cir. 1998), the Tax Court held that while the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization operated for the substantial private benefit of KJ’s Place and its owners.

Application of law

You are not described in IRC Section 501(c)(3) because you are not operated exclusively for exempt purposes. You do not meet the provisions of Treas. Reg. 1.501(c)(3)-1(a)(1) because you do not meet the operational test, failing the requirement of Treas. Reg. Section 1.501(c)(3)-1(c)(1) that no more than an insubstantial part of your activities is devoted to a non-exempt purpose. Specifically, the facts show that you are not operating exclusively for exempt purposes because you serve private interests, rather than public interests as required by Treas. Reg. 1.501(c)(3)-1(d)(1)(ii). Your activities substantially benefit G. Like Example 3 in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(iii), you violate the restriction on private benefit due to your arrangement with G.

You are like the organization in Rev. Rul. 76-206 because you serve a private rather than a public interest by enabling G to increase revenues. You and G were created to operate together and promote the same brand and overall vision. The brand name and much of the intellectual property is owned by either your founder or G. You are G’s only customer. G creates materials that you will use in your programs but that will also boost G’s brand and sales. Although there may be some charitable and educational purposes served by your mentoring and other

programs, the private benefit to G is more than incidental. The ruling quotes “where an organization is serving both public and private interests, the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate the organization is serving a private interest.”

Similarly, as noted in Better Business Bureau of Washington, D.C., a single non-exempt purpose will destroy exemption regardless of the number or importance of truly exempt purposes. The fact that you may have a charitable or educational purpose does not cure the existence of the substantial non-exempt purpose of furthering G’s financial interests. Additionally, you are like the organization described in International Postgraduate Medical Foundation, because G, a for-profit organization, benefits substantially from your activities even if you further other exempt purposes. You are like KJ’s Fund Raisers, Inc. because, although you may raise money for charitable purposes, you are also operated for the substantial benefit of G.

Further, like P.L.L. Scholarship Fund, you cannot be regarded as “operated exclusively” for one or more exempt purposes because more than an insubstantial amount of your activities are not in furtherance of an exempt purpose. Your activities are, in substantial part, designed to enhance the profitability of G. Your activities are so interrelated with G that it is difficult to clearly distinguish between you and G.

You are like the organization in est of Hawaii v. Commissioner because you are dependent on one for-profit entity, G, for your operations. You and G operate together and partner to create and promote the materials used by both you and G. Your operations benefit a for-profit organization more than insubstantially, regardless of whether payments to the for-profit are excessive. You are similar to Church by Mail, Inc., because your operations substantially benefit G.

Conclusion

Based on the above, we conclude that you fail to meet the operational test of IRC Section 501(c)(3). You have a substantial non-exempt purpose of serving the private interests of G. Accordingly, you are not exempt under 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