



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

Date:
July 14, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Number: **202041009**
Release Date: 10/9/2020

UIL Number: 501.00-00, 501.03-05, 501.35-00, 501.36-01

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.

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

Enclosures:

Notice 437

Redacted Letter 4034

Redacted Letter 4038

cc:



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

Date:
April 30, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Company
E = Program
F = Fund
G = Program
H = Program
K = Program
M = Program
N = Fund
O = Program
P = Program
q dollars = Amount
r dollars = Amount
s percent = Number
t percent = Number

UIL:

501.00-00
501.03-05
501.35-00
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 IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You were formed in the state of B on C. Your Articles of Incorporation state that you are organized exclusively for charitable purposes, including, for such purposes, increasing the capital available to organizations that develop and/or operate (i) long term affordable housing for the economically and physically disadvantaged, (ii) community facilities such as schools and community health centers, (iii) businesses providing access to healthy

foods, (iv) sustainable energy projects, (v) commercial real estate, and (vi) other projects that may increase social welfare. Your Articles of Incorporation also state you pursue your purposes by increasing the participation of conventional financial institutions in the financing of such projects through the sale of loans, direct and indirect loan participation, technical assistance and credit enhancement, increasing access to capital through various means tailored to achieve your charitable purposes, and making charitable contributions to D, and any other non-profit corporation of which D is the member, provided the recipient organization is exempt from under IRC Section 501(c)(3).

You stated your purpose is to deploy capital into projects that promote a social good and that otherwise struggle to find financing in normal capital markets. The activity will be conducted by you on an on-going and full-time basis.

The bulk of your work will focus on enhancing economic opportunities in low income and underserved communities and on improving air quality and mitigation potential negative effect of climate change. You will raise capital from impact investors. You describe impact investors as individuals and institutions who want to see that their funds accomplish positive social and environmental objectives and as a concomitant objective to earn financial returns and utilize that capital to finance projects and organizations in line with the investors' dual objectives.

You will organize private investment funds that you will manage to accomplish your purposes. You provided examples of funds you already organized, which include, but are not limited to:

- A fund or funds to make loans to so-called E projects, which finance preventive health and social service investments in an effort to decrease the utilization of costly acute care interventions after problems have arisen. For instance, you state an E project might pay for intensive rehabilitation services for individuals struggling with addiction in an attempt to avert prison and emergency room stays – the avoidance of which creates cost savings that can potentially be utilized to repay investors a modest return. You have organized F, a fund to assist in accomplishing this purpose. Two of the E projects underway are as follows:
 - Project G: This loan was made by the F. F is a Limited Partnership Small Cap Fund and is managed by you. The loan financed the provision of housing and intensive social services for chronically homeless individuals in a specific county, to help reduce the incidence of hospital stays and incarcerations among that population. You state the loan was not commercially financeable due to the absence of collateral and the experimental nature of the program. Project G is administered by K, an IRC Section 501(c)(3) public charity.
 - Project H: This loan was also made by the F and is managed by you. The loan financed the provision of intensive social services for individuals exiting incarceration to help prevent recidivism and reduce the prison population in a specific county. You state the loan was not commercially financeable due to the absence of collateral and the experimental nature of program. Project H is administered by M, an IRC Section 501(c)(3) public charity.
- A fund or funds to finance small scale energy efficiency and clean energy project finance. For instance, a nursing home, small industrial facility, or health center might seek to make capital improvements to its heating and cooling and lighting systems that would drive down its utility costs. A portion of the savings could be used to repay the costs of the improvements over time, with the remainder staying with the organization to allow it to reinvest in the provisions of its core services. Y have organized the N, a fund

formed as an LLC to assist in accomplishing this purpose. The following are two of your clean energy projects, which are underway:

- Project O: This loan was made by N and is managed by you. The loan financed energy efficiency and water efficiency upgrades in several thousand units of non-profit affordable housing, lowering bills for low income tenants. The loan was not commercially financeable due to lack of real estate collateral.
- Project P: This loan was made by N and is managed by you. The loan financed energy efficiency upgrades in a non-profit senior living facility, lowering the property's operating costs. The loan was not commercially financeable due to lack of real estate collateral and the small size of the borrower.

These kinds of activities are not well supported by traditional capital markets. The activities are too niche, too small scale, or too low-return to draw the attention and resources of banks, venture capital and private equity funds, and public stock and bond markets. You state your objective will be to raise and manage capital to serve these underserved parts of the economy that do not – and are not likely to – have ready access to capital from a wide array of other sources. You stated the interest rates for these types of borrowers to small or risky for a traditional bank, would be likely to use alternative lending platforms with high interest rates. You state your loan interest rates are range from s percent to t percent.

You have established a method of analysis whereby potential investment opportunities will be screened to help determine the merits of each potential portfolio company. If the decision is made to move forward, the objective will be to complete a comprehensive due diligence process to identify and address any potential risks, and may include: assessments of organizational competence, analysis of cash flow projections, analysis of financial statements, assessments of available collateral to determine its value and marketability, a review of business plans, and market analysis. The information garnered through this process may result in the modification of the terms and conditions or potentially the rejection of the investment opportunity.

In furtherance of your charitable mission, you will provide these services for a management fee that is substantially below market and is intended primarily to cover its costs. Any management fees derived constitute program revenues from execution of your tax-exempt charitable purpose. In the event you do generate residual moneys over and above those costs, 100 percent of that “return” would be either reinvested in funds consistent with your charitable purpose or contributed to D, which you describe as your parent company.

You state while your management activities are conducted in the public interest and in furtherance of your non-profit mission, investors who make investments in any private fund managed by you are not entitled to charitable deductions and no such suggestion is made. While you generally have the ability to invest in companies anywhere in the world, the geographical focus of your investments is predominantly the United States. Your officers and employees are required to be actively involved in your day-to-day management and with vetting charitable investment opportunities. They are required to devote substantial time and attention to such services.

Your Counsel has advised you, that given the nature of your activities, you will be required to register with the Securities and Exchange Commission (“SEC”) as an investment adviser once you meet the eligibility threshold, and in the meantime you are required to register and have registered with the state of B. You state there is nothing inconsistent with your status as a state registered adviser with a charitable designation by the Service. As a state registered adviser, you have no alternative but to act solely in the best interests of your charges,

namely, the pooled investment vehicles that are commingling the assets of investors (i.e. private funds) as a mean of deploying those assets in furtherance of your charitable purpose. You state at present time, you have no intention to manage investor assets that are not dedicated to the purposes laid out above.

You provide your services with minimal fees and share space and services with your “parent” organization, D, in order to keep costs low and so you may provide a near market return for investors. You claim that you generally arrange to pay for, from your fees, all the routine operating expenses of the private funds you manage in order to control expenses. You state you share employees with D in order to keep expenses as low as possible. Certain officers and employees will be “dual-hatted” between D and you.

You state that there is no guarantee made to investors that they will receive a fair market return and investors are required to make certain representations when making commitments including that they are aware of the risks associated with engaging in the investment. Investors are incentivized to participate in the charitable mission as you described in your brochure and as set forth in the applicable offering documents of the private funds. You have a publicly available brochure which describes your investment services.

Your officers and employees are not restricted from investing, for their own account or for the account of their family members, in the investment partnerships you have established. You state that your investment management services are provided directly to the Private Funds and not individually to the Private Funds’ investors.

You are a state registered investment adviser managing pooled investment vehicles to achieve your charitable purpose. You do not conduct fundraising activities as a traditional charity would; rather, you manage private funds (i.e. pooled investment vehicles) which conduct securities offerings which raise capital for investment in the charitable activities. You pay from your fees all the routine operating expenses of the private fund you manage in order to control expenses.

You received some start up funding from D, but now are fully supported by program revenues. Most of your expenses are for professional fees. As of a couple of years ago, you were already managing q dollars in assets. You are compensated for your services to the Private Funds through an annual management fee. The fees charged to manage the Small Cap Fund, F, are a percentage of the capital contributions paid, less write-offs, paid quarterly in arrears. The fee to manage N is a percentage of all outstanding notes receiving and cash held, paid monthly in arrears. The fees are paid directly from the funds to you.

The financial data you provided show that by your third year of operations, you project having substantial excess revenue over expenses. By your fourth year of operations, you project that your excess revenue will exceed r dollars.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where 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) states that in order to qualify under IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or 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 which accomplish one or more of such exempt purposes specified in IRC 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)(2) defines the term “charitable” as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Treas. Reg. Section 1.501(c)(3)-1(e) provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under IRC Section 501(c)(3), even though its net profits do not inure to the benefit of individual members of the organization.

Revenue Ruling 68-489, 1968-2 C.B. 210, states that an organization will not jeopardize its exemption under IRC Section 501(c)(3), even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for Section 501(c)(3) purposes.

Rev. Rul. 69-528, 1969-2 C.B. 127, concerns an organization formed to provide investment services for a fee exclusively to organizations exempt under IRC Section 501(c)(3). The ruling states that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit. If the services were regularly provided by one tax-exempt organization for other tax-exempt organizations, such activity would constitute unrelated trade or business. Thus, the ruling holds that the organization is not described in Section 501(c)(3) since it is regularly carrying on the business of providing investment services that would be unrelated trade or business if carried on by any of the tax-exempt organization on whose behalf it operates.

In Rev. Rul. 71-529, 1971-2 C.B. 234, the organization provided assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualified for exemption under IRC Section 501(c)(3); distinguished from Rev. Rul. 72-369. Membership in the organization was restricted to colleges and universities exempt under Section 501(c)(3). The organization did not make its services available to anyone other than the exempt organizations controlling it.

In Rev. Rul. 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services for IRC Section 501(c)(3) organizations to improve the administration of their charitable programs. The organization enters into agreements with unrelated Section 501(c)(3) organizations to furnish managerial and consulting services on a cost basis. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely to exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

In Rev. Rul. 74-587, 1974-2 C.B. 162, an organization that devoted its resources to programs that stimulated economic development in economically depressed, high-density, urban areas, inhabited mainly by low-income minority or other disadvantaged groups qualified for exemption under IRC Section 501(c)(3). In selecting recipients for aid, the organization consults with other nonprofit and governmental organizations operating anti-poverty and anti-discrimination programs that will fill a community need and offer the greatest potential

community benefit. Preference is given to businesses that will provide training and employment opportunities for the unemployed or under-employed residents of the area. In selecting a recipient for financial assistance, the organization considers the applicant's motivation, education, experience, and prior participation in management and job training programs. In addition, when appropriate, the organization provides technical assistance and counseling. The facts relating to the financial activities used to carry out this program established that these loans and purchases of equity interest are not undertaken for purpose of profit or gain but for the purpose of advancing the charitable goals and are not investments for profit in any conventional business sense.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court concluded that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the organization's sole activity was to offer consulting services to limited-resource organizations for a fee. Its only source of income was from fees for services, and those fees were set high enough to recoup all projected costs and to produce a net profit. It failed to show it would not be in competition with commercial enterprises. The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Court held that the organization's primary purpose was not educational, scientific, or charitable, but rather was the conduct of an ordinary commercial consulting enterprise in competition with other commercial firms. The organization was not operated exclusively for tax-exempt purposes within the meaning of Section 501(c)(3).

In Living Faith, Inc. v Commissioner, 950 F.2d 365 (7th Cir. 1991) the court wrote that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus, it did not qualify for exemption under IRC Section 501(c)(3). The appellate court stated the factors that the court relied on to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

- 1) The organization sold goods and services to the public.
- 2) The organization was in direct competition with for profit businesses.
- 3) The prices set by the organization were based on pricing formulas common in retail food businesses.
- 4) The organization utilized promotional materials and "Commercial catch phrases" to enhance sales.
- 5) The organization advertised its services and food.
- 6) The organization did not receive any charitable contributions.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. "Among the major factors courts have considered in assessing

commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.”

In Zagfly, Inc. v. Commissioner, 603 F. Appx. 638 (9th Cir. 2015), the court of appeals found that the organization’s primary activity, the operation of a web-based broker that would sell flowers at market rates, was not a charitable activity, but rather a commercial activity that amounts to an unrelated trade or business. When customers purchase flowers, they will be able to designate a charitable organization, from a list of approved organizations, to receive all the profit arising from the transaction. They will approve an organization to receive a share of its profits only if the recipient is exempt under IRC Section 501(c)(3). If this business model is established and viable, they hope to expand web site offerings to include travel reservation services. The organization did not meet the requirements of Section 501(c)(3) because its primary activity did not further an exempt purpose.

Application of law

You are not exempt under IRC Section 501(c)(3) because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-l(a)(1). Specifically, the facts show you are not operated exclusively for Section 501(c)(3) purposes because a substantial portion of your activities consists of managing funds for a fee which provide a market or near-market returns for investors. Any charitable activity you conduct is incidental to your overall non-exempt purposes. You do not meet the requirements of Treas. Reg. Section 1.501(c)(3)-l(c)(1) because more than an insubstantial amount of your activities furthers non-exempt purposes.

Your primary activity is managing investment funds, whereby you, like any other investor, are trying to secure the highest returns possible for your clients. Any activity that could be construed as charitable as defined in Treas. Reg. Section 1.501(c)(3)-l(d)(2), is incidental to your substantial non-exempt activities.

Your investment management services are like those described in Rev. Rul. 69-528. This ruling held that if a tax-exempt organization provides investment services for a fee to another unrelated tax-exempt organization, such activity would constitute an unrelated trade or business. Thus, it was reasoned that an organization formed for the sole purpose of providing such services is not described in IRC Section 501(c)(3) because it is organized and operated for the primary purpose of carrying on an unrelated trade or business, as described in Treas. Reg. Section 1.501(c)(3)-l(e).

You are dissimilar to the organization in Rev. Rul. 71-529 which charged fees that were “substantially below cost” to manage the investment funds for colleges and universities exempt under IRC Section 501(c)(3). In contrast, the funds you manage are available to anyone interested in investing with you, your fees cover your costs - which are reduced due to shared efforts with D - and leave margin for your investors to receive market or near-market rate returns. Also, unlike the organization in this ruling, you do not receive public contributions.

You are like the organization described in Rev. Rul. 72-369 because you are operating in a non-exempt manner. The organization described in this ruling was conducting services only for organizations exempt under IRC Section 501(c)(3) and was still found to be conducting commercial activities. The fact that you provide investment management services for funds which the general public may invest in, shows that you are operated in even more of a commercial manner than the organization described in the ruling. This ruling explains that

providing services at cost is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3).

You are unlike the organization in Rev. Rul. 74-587. You have a process where you thoroughly screen potential recipients of the loans to ensure they have a good rate of risk/return. You manage the investment funds for a fee and turn your earnings over to your investors. Your primary concern seems to be the rate of return for your investors.

The organization in B.S.W. Group, Inc. did not qualify as it was engaged in an activity characteristic of a trade or business operated typically by commercial ventures. You manage funds for your clients for a fee to secure the best possible rate of return. Your fund management activity resembles a trade or business that is ordinarily carried on by commercial ventures organized for profit. This is a substantial non-exempt purpose, as described in Better Business Bureau of Washington, D.C., Inc., which precludes you from exemption under IRC Section 501(c)(3).

You are operating in a manner similar to the organization described in Airlie Foundation. You offer competitive rates for investors, you are funded solely by investment management fees, you have a projected high financial reserve over the next few years, and you do not plan to receive charitable donations from the public.

You are similar to the organizations described in the American Institute for Economic Research, Living Faith, Inc. and Zagfly, Inc. You are managing investment funds and you are in direct competition with other commercial markets. This is indicative of an unrelated trade or business. Your primary source of revenue is from investment fees. Your expenses are for professional fees paid to manage the funds. You are sharing resources with a non-profit to keep your costs low, which ensures a better return for the investors. Using a non-profit to offset your costs and increase the returns for investors is not an exempt purpose.

Your position

You are a state registered investment adviser which manages pooled investment vehicles in furtherance of your charitable purposes, you must have a robust conflict of interest policy and code of ethics. Your conflict of interest policy and code of ethics are enforced by both the state of B and the SEC through the applicable laws which are, in fact, criminal statutes. Therefore, you state you hold to a higher standard than that imposed by the Code and as a result, compliance with this higher standard should be more than sufficient to demonstrate compliance with the applicable statutes under the Code.

You also state that you are formed under State B's law and registered as a registered investment adviser. You do not conduct fundraising activities as a traditional charity would; rather, you manage private funds (i.e. pooled investment vehicles) which conduct securities offering which in fact raises capital for investment in the charitable activities otherwise managed by D, your parent organization.

You stated that you are a separate non-profit corporation, nevertheless, you are operationally integrated with your tax-exempt parent corporation, D. You applied for your own exemption rather than merely apply as a supporting organization since your operation merits your stand-alone treatment as a tax-exempt entity as described in IRC 501(c)(3).

You were formed to relieve poverty, eliminate prejudice, reduce neighborhood tensions, and combat community deterioration through a program of financial assistance in the form of low cost or long-term loans to various

business enterprises in economic depressed areas. You state you are similar to the organization in Rev. Rul. 74-587 which was granted exemption under IRC section 501(c)(3). You state that the organization in Rev. Rul. 74-587 was ruled that such loans were not undertaken for purpose of profit or gain, but for the purpose of achieving charitable goals of the organization. You stated that some of the individuals receiving financial assistance in their business endeavors under your program may not themselves qualify for charitable assistance as such, you state this does not detract from the charitable character of your program. The recipients of the loans and working capital in such cases are merely the instruments by which the charitable purposes are sought to be accomplished.

You further state that you are similar to the organization described in Rev. Rul. 74-587 if you had, instead, created a series of wholly owned LLCs that are disregarded entities, then your lending activity would be on all fours with Rev. Rul. 74-587 and its progeny. You stated that in this way, investors in the funds can receive a return without implicating the inurement prohibition of Section 501(c)(3). Whatever returns are derived from the investments you make belong to, and have always belonged to, the investors in the special purpose vehicle.

You also state that your activities are similar to those described in Rev. Rul. 68-489. Your activities can be described as an execution of the micro finance strategy. You said the loans the funds provide generally carry less than “normal” interest rates. The “special purpose vehicles are designed to insulate the assets of (you) in order to protect the patrimony of the charity.” You said the only difference between the organization in this ruling and you is that the fund assets (i.e., money being lent) belong to investors, thus de-risking the charity.

You cite other rulings that describe organizations exempt because they combat community deterioration. You state that you are combating community deterioration by bringing third party money into these communities – thus reducing the burden of government. On the other hand, you go on to describe the screening process you use to select investments. They go through two screens with your investment manager. First, a risk/return screen is applied. Then it also goes through a social/environmental impact screen. Every investment must meet quantifiable social and environmental impact objectives.

Additionally, you state your fee structure is different than that of a standard investment manager. Your fee is generally a quarter to a half-percent lower with no share of profits, and ordinary investor would take 20 percent of the profits. Your investors receive market or near-market rate returns.

Our response to your position

Although you state you are held to a higher standard than the IRC because of the Code of Ethics enforced by the state and the SEC, being ethical in your practice is not the issue at hand; rather, your qualification for exemption under IRC Section 501(c)(3) is the issue.

You manage private investment funds which seek to finance, or assist with financing, various projects, some of which may be in furtherance of IRC Section 501(c)(3). The recipients of the investment funds are first vetted through two processes to determine that they are a suitable risk. You further stated that, “...some of the individuals receiving financial assistance in their business endeavors under your program may not themselves qualify for charitable assistance as such.” You are conducting a trade or business with only incidental charitable purposes, and therefore not qualified for exemption under Section 501(c)(3).

You state that you are registered with the SEC as an investment advisor. The funds are open to any interested investors who expect market or near market-returns while also capitalizing on activities with a public

purpose. You charge your investors a percentage-based transaction fee and the loans made by your funds are at market rates to borrowers who have a difficult time accessing credit. You conduct a trade or business and are dissimilar to the organization in Rev. Rul. 74-578.

You state you are different from a for-profit investor because your rates are a quarter to a half percent lower and you take no share of the profits. However, you are using D's exempt status to offset your costs and keep the return to your investors at or near market rate. You do not seek public contributions. In order to receive funds, a risk/return screen is applied to applicants, followed by a social and environmental impact screen. This process alone affirms that you are first and foremost concerned with the risk and return potential. The applicant seemingly wouldn't even make it to the "social and environmental" screen if they were deemed to not have a good rate of return with minimal risk.

Conclusion

Based on the above facts and analysis, you do not qualify for exemption under IRC Section 501(c)(3). You operate for the substantial non-exempt purpose of managing investment funds for a fee. Any charitable objectives or results are incidental to your business purposes of maximizing returns for your investors. Accordingly, you do not qualify for exemption 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.

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