



Department of the Treasury
Internal Revenue Service

IRS

Independent Office of Appeals

Number: 202332014

Release Date: 8/11/2023

Date: **MAY 16 2023**

Person to contact:

Name:

Employee ID number:

Telephone:

Hours:

Employer ID number:

Uniform Issue list (UIL):

501.03-00

501.33-00

501.36-00

Certified Mail

:

This is a final adverse determination that you do not 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).

We made the adverse determination for the following reasons:

The organization is not organized and operated for exempt purposes. You are not organized properly because you fail to state clearly what the exempt purpose of the organization is and how you plan to achieve it. Your Articles lack a dissolution clause. You are not operated for exempt purpose for the following reason:

Your activities involve a substantial amount of commercial activities including the sale of merchandise (sneakers, books, etc), marketing services (including advertising services with a \$ subscription fee), media production, stock investing, and insurance services.

You appear to be engaged in inurement and/or private benefit with your founder in that you reported student loan cancellation income on your return, you claim to hold a license, service mark and perhaps other intellectual property rights of the founder in relation to the founder's endeavors among others, and your founder intends to report any royalty income on your return.

Some of your activities are and in association with a .

You would like to sell stock in your company to investors, do a Direct Public Offering, and register with the SEC.

You claim that the purpose of your setting up a profit sharing agreement is to allow donors to hide their identity.

You're required to file federal income tax returns on Forms . 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 [IRS.gov/forms](https://www.irs.gov/forms) 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 IRC Section 6110 after deleting certain identifying information. We 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 can file an action for declaratory judgment under the provisions of IRC Section 7428 in either:

- The United States Tax Court,
- The United States Court of Federal Claims, or
- 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. You can download a fillable petition or complaint form and get information about filing at each respective court's website listed below or by contacting the Office of the Clerk of the Court at one of the addresses below. Be sure to include a copy of this letter and any attachments and the applicable filing fee with the petition or complaint.

You can eFile your completed U.S. Tax Court petition by following the instructions and user guides available on the Tax Court website at ustaxcourt.gov/dawson.html. You will need to register for a DAWSON account to do so. You may also file your petition at the address below:

United States Tax Court
400 Second Street, NW
Washington, DC 20217
ustaxcourt.gov

The websites of the U.S. Court of Federal Claims and the U.S. District Court for the District of Columbia contain instructions about how to file your completed complaint electronically. You may also file your complaint at one of the addresses below:

U.S. Court of Federal Claims
717 Madison Place, NW
Washington, DC 20439
uscfc.uscourts.gov

U.S. District Court for the District of Columbia
333 Constitution Avenue, NW
Washington, DC 20001
dcd.uscourts.gov

Note: We will not delay processing income tax returns and assessing any taxes due even if you file a petition for declaratory judgment under IRC Section 7428.

Taxpayer rights and sources for assistance

The Internal Revenue Code (IRC) gives taxpayers specific rights. The Taxpayer Bill of Rights groups these into 10 fundamental rights. See IRC Section 7803(a)(3). IRS employees are responsible for being familiar with and following these rights. For additional information about your taxpayer rights, please see the enclosed Publication 1, Your Rights as a Taxpayer, or visit IRS.gov/taxpayer-bill-of-rights.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried but been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. To learn more, visit taxpayeradvocate.irs.gov or call 877-777-4778.

Tax professionals who are independent from the IRS may be able to help you.

Low Income Taxpayer Clinics (LITCs) can represent low-income persons before the IRS or in court. LITCs can also help persons who speak English as a second language. Any services provided by an LITC must be for free or a small fee. To find an LITC near you:

- Go to taxpayeradvocate.irs.gov/litcmap;
- Download IRS Publication 4134, Low Income Taxpayer Clinic List, available at [IRS.gov/forms](https://irs.gov/forms); or
- Call the IRS toll-free at 800-829-3676 and ask for a copy of Publication 4134.

State bar associations, state or local societies of accountants or enrolled agents, or other nonprofit tax professional organizations may also be able to provide referrals.

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 questions, contact the person at the top of this letter.

Sincerely,

Danny Werfel
Commissioner
By

Enclosures:
Publication 1
IRS Appeals Survey

cc:



Department of the Treasury
Internal Revenue Service
 PO Box 2508
 Cincinnati, OH 45201

Date: February 22, 2022

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = State

C = Date

D = Individual

E = Name

F = Name

G = Name

H = Name

J = Name

y dollars = Amount

UIL:

501.03-00

501.33-00

501.36-00

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 in the state of B on C by D. Your corporate purpose indicates you are set up to help children in all areas, whether it is children's books or getting high school students into college. Moreover, your Articles of Incorporation have no provision for the disposition of your assets upon dissolution. You are a successor to E, a legal service provider and a 527 political action organization. You state the relationship with E is on the notion that you are the parent company and license holder for E.

You submitted bylaws that state you are organized exclusively for charitable purposes, including, for such purposes, the making of distributions to organization that qualify under sections 509(a)(1) and 170(b)(1)(A)(vi).

Your bylaws also indicate that you will have members known as Board of Directors that are family-based and can only be Board of Directors with direct lineage to D and his immediate family. Regarding the term of office for your directors, your bylaws state each director shall hold office for his/her lifetime and next of kin applies.

Your bylaws state your specific objectives and purposes shall be to solicit, collect and otherwise raise money for charitable purposes: to expand, contribute, disburse, and otherwise handle and dispose of the same for such purposes relating to the aims and goals of F and you which has a supporting agency like E. You explained that F is a program run with E where you challenge others to enact social change through volunteering and in-kind suggestions directed towards humanity.

Your narrative on the Form 1023 states you engage in activities in digital and print media, mass communications, and broadcasting that will raise money to fund causes created by social injustices. You are a digital media organization that also publishes printed media and scripted media on blogs and on other communication avenues.

You started a community-based social blog with the pen name known as G and stated that you were organized to act as the license holder of D as a literary agency. You also indicate that D organized a social media-based foundation, F, and a new media in arts and entertainment with H, a . You state you were previously inactive and decided to become active because H has a podcast, blog, service mark and trademark pending. Your plans are to be a foundation that is directed around the face of H. You state H is a social media influencer with future endeavors of adapting into a radio station and television program. Moreover, you state that D owns all rights to G and H and that the board of trustees will have next of kin rights to all works by D and H.

Your response to our additional information request letter states that you are a self-financed company created by D as an angel investor and that B laws allow D to share debt or securities with an entity as a qualified person. You also state that rules for angel investors allows D to donate profits and pay taxes and fees on his individual tax reports. Additionally, D is in contract with you to provide funds in an employee revenue sharing program.

The information submitted regarding your profit-sharing agreement / employment contract shows:

- Enrolling in the agreement means an employee can donate money or take cash advances from your designated corporate accounts or credit cards and the employee agrees to share the profits.
- Any funds an employee donates to you will be matched with an agreement and taxed.
- The limit on advancement is y dollars per year or unlimited if you are D.
- The employee buy-in profit-sharing is when an employee sets up an account with your SEP IRA program and uses a percentage of his wages to buy into the program. The employee will be compensated based on performance and if the employee purchases stock in you or the sister company, E, the same rules apply. For employee buy-outs you state standard rules apply and standard fees and penalties apply except if you are D.

Moreover, you and E have opened an employee-based SEP IRA. The beneficiary on this account is the of D. You explained the main goal of the retirement fund is to build enough marketing capital that will allow you to sustain continued growth. Another goal of this account is to have retirement funds on the corporate level that allows D and employees or vendors to purchase into the retirement fund through contracts of corporate profit sharing.

You explained that the Board of Trustees can't be solely involved in a nonprofit organization and gain a benefit, so D created the angel investors program and a revenue sharing program.

You also stated in the response:

- You are a literary company and the hosting company for D that is designed to protect the literary works of D.
- You are made of three sections: you, E, and J, a division within you.
- You are the parent company that is the legal representation for all the writings and works of G.
- You were set up to promote all of G's efforts in entertainment.
- J is a small business, mass media digital print, and legal services company founded by D.
- J is the business name that will be used on invoices and other social media platforms because
- You serve as the holding company for permits and licensing. Specifically, you hold licenses as a business vendor and as a financial consultant, plus civil insurances.

Your response additionally stated that you conduct notary services, business set-up, and legal services. Specifically, you wrote that:

- Your notary services include certifying legal documents and any other documents that need to be authentic and have a witness.
- Your business set-up services include organizing a structure for a business plan, organizational formatting for corporation, board formalities for limited liability partnerships or companies.
- You can provide asset evaluations for potential investors or bank loans.
- You can help with organizing a foundation, regrouping a trade, preparing documents for state and federal monitoring systems and consulting on drafting bylaws and privacy statements.
- Your legal services are designed to shepherd information for copyrights, trademarking, service marking, and any services provided without employing a law firm.

Concerning specifics about fees and clients for services that you will provide, you declined to provide this information stating that you made an error in providing this and that you meant to mention that one of your employees is a notary who can furnish notary services that are not affiliated with you. However, you didn't address the business set-up and legal services.

You further indicated that:

- You have elected to become a private foundation and family firm.
- You have an investment portfolio and you are building it up to process a file with the Securities Exchange Commission. You state your plans are to trade on the exchange with direct public offerings for common and uncommon stocks.

You explained that the board of trustees must only be members of D's immediate family and the only way a person can become a trustee is through lineage of a family member. Specifically, trustees must have lineage to D's family tree.

Concerning the President of F, you state:

- He/she has no authority on the function of the board only to make sure that F is active and running for two centuries in the event of D's disappearance from his role as F's founder.
- He/she is to make sure that the estate of D collects a ten percent rate on all money collected into the account of the treasury of F.

You will be funded by public compensation, private compensation, loans, fundraising events, revenue sharing, profit sharing and monetary statements. Finally, you stated that the reason for the filing of the exemption status several years after your formation is due to the current pandemic, which mandated D to stay at home and resulted in the formation of as well as H by D. You then filed for exemption under IRC Section 501(c)(3).

Law

Internal Revenue Code (IRC) Section 501(c)(3) describes corporations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(a)-1(c) provides that the terms “private shareholder or individual” in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Treas. Reg. Section 1.501(c)(3)-1(a)(1) states 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 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization’s assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization’s articles or operation of law, be distributed for one or more exempt purposes.

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 in not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals as defined in Treas. Reg. Section 1.501(a)-1(c).

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an exempt organization must serve a public rather than a private interest. The organization must establish that it is not organized or operated to benefit 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.”

In Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973) the Court said operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose.

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 section 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 activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit."

Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97, affd. 711 F.2d 1058 (6th Cir. 1983), provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization's request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service's denial, stated "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant." The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Application of law

You are not described in IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you fail both the organizational and operational tests.

Regarding the organizational test, your Articles of Incorporation do not limit your purposes to one or more exempt purposes. In addition, there are no provisions in your Articles of Incorporation dedicating your assets to exempt purposes upon dissolution. As a result, you have not satisfied the organizational test as described in Treas. Reg. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4).

You are not as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you have not established that you are engaged primarily in activities which accomplish one or more purposes specified in IRC Section 501(c)(3). The facts do indicate that you were created for the benefit of D and his family as evidenced by the following:

- You will have members known as Board of Directors that are family-based and can only be Board of Directors with direct lineage to D and his immediate family.
- D owns all rights to G and H and that the board of trustees will have next of kin rights to all works by D.
- You are designed to act on licensing and representation of all legal requirements on D and the pen name, G.
- You act as literary agent for D.

Further D is a private shareholder within the meaning of Treas. Reg. Section. 1.501(a)-1(c) in that he has a personal interest in your activities. These facts show your net earnings are inuring to D in contravention to Treas. Reg. Section 1.501(c)(3)-1(c)(2) which prevents you from qualifying under Section 501(c)(3).

You are not as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you serve a private interest rather than a public interest. You did not establish that you are not organized or operated to benefit 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.” You are operated for the benefit of designated individuals, specifically D and his family as indicated by the fact that you are a family-owned business and a certain percentage of your earnings are collected for the estate of D. Your profit sharing agreement also shows that you are operated for substantial nonexempt purposes. Similar to the organization described in Old Dominion Box Co., Inc., a substantial portion of your activities are for private interests and you are operated for substantial nonexempt purposes.

You are operated like the organization in B.S.W. Group, Inc. because you are substantially engaged in commercial activities of business set-up and legal services. You are in direct competition with similar businesses operated on a for profit basis. These activities constitute the conduct of a commercial business of the sort which is ordinarily carried on by commercial ventures organized for profit. This precludes exemption under IRC Section 501(c)(3).

In Pius VII Academy, Inc., La Verdad, and New Dynamics Foundation, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. The information that was provided was confusing and vague and the information that was provided shows that you fail the operational test. As provided in New Dynamics Foundation, any gaps in the administrative record will be resolved against the applicant.

Conclusion

Based on the facts and information submitted, we conclude that you are not organized and operated for exempt purposes under IRC Section 501(c)(3). Specifically, the facts show your net earnings inure to D, you are operated for the benefit of D and his family, and you are operated in a commercial manner. You also fail the operational test because you did not provide clear explanations and descriptions of your activities.

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 Determination 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
PO 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