



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

Date:
06/07/2023
Employer ID number:

Form you must file:
1120

Tax years:
All

Person to contact:

Release Number: 202335015
Release Date: 9/1/2023
UIL Code: 501.03-05

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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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:
Letter 437
Redacted Letter 4034
Redacted Letter 4038



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

Date: 04/17/2023

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Legend:

B = Date of Formation

C = State of Formation

UIL:

501.03-05

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 organized on B in the state of C. Your Articles of Incorporation state that you are a non-profit corporation for government and commercial programs. You state in your application that your activities will include creating consortiums for advancing the development of technology and creating the commercialization of business startups.

You later state your purpose is to create an incubator type of medium for individuals, businesses, governments, and non-profit organizations to pool resources to achieve the consortium's objective of accelerating current projects in the area of digital design and further develop technology in collaborative environments. Specifically, you develop and broadcast research requirements through the use of a third party, facilitate teaming arrangements, manage proposal requests, manage the evaluation and award, manage the projects, and disseminate the research results. You provide administrative services including event coordination and planning, financial reporting, travel planning for consortium staff, and contracts services related to operating the consortium.

In essence, you link organizations who need research to be performed with those who are able to conduct the research, and each of these projects requires a fee to be paid. The criteria for use of your services are determined by a management agreement.

In subsequent responses to requests for additional information, you state that you provide your services to private industry and for-profit businesses that wish to work with you, as well as government and non-profit entities. You indicate that up to a quarter of your clients and stakeholders will be organizations exempt under IRC Section 501(c)(3). You state that the project developments will eventually become available to the general public, but you would not be making a profit. You state that your fees, which represent membership fees and fees collected from awards received by the entities you will work with based on the size of the project award amount, would be only enough to cover your expenses such as operating costs and staffing. If some revenue exceeds cost, the difference would be reimbursed to the client through lowered membership fees. While you call the potential entities you will assist "members," the only fees reflected in the proposed financial information provided indicate you will receive income primarily from fees for services rendered. The fees that you collect from the project awards will be used to manage operations, and if the percentage collected exceeds your costs, then you would reduce the participant's fee to be part of the consortium.

Law

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable, or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

IRC Section 513(c) provides that a "trade or business" includes any activity which is carried on producing income from the sale of goods or the performance of services. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit.

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 that accomplish one or more 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(e)(1) states an organization may meet the requirements of IRC Section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes.

In Revenue Ruling 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services exclusively for IRC Section 501(c)(3) organizations to improve the administration of their charitable programs. The organization enters into agreements with unrelated IRC Section 501(c)(3) organizations to furnish managerial and consulting services on a cost basis. This ruling concluded an organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the 'operational test,' the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of Section 501(c)(3) and the applicable regulations. 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 for 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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the organization's sole activity was to offer consulting services on program development to limited-resource organizations for a fee. The organization did not limit its clientele to organizations which were themselves organizations described under Section 501(c)(3) of the Code, but only to organizations which were either nonprofit or exempt. The fees charged were set at or close to cost, but they were not less than its full cost of providing its services. 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 Abovo Foundation, Inc. v. Commissioner of Internal Revenue, 115 T.C.M. (CCH) 1277 (2018), the court denied exemption to an organization conducted management consulting services to medical providers and government programs, for negotiable, market-based fees based on the expertise required to complete the projects. The organization reasoned that they were lessening the burdens of government by providing services to government projects and medical providers. The court asserted that the organization did not fulfil its burden of proof and the organization's services were actually a way to promote the consulting service in a way normally carried on as a for-profit trade or business.

In New World Infrastructure Organization v. Commissioner of Internal Revenue, 122 T.C.M (CCH) 88 (2021), the court denied exemption to an organization derived from a for-profit corporation for the purpose of manufacturing steel pipe and then selling it to government agencies and businesses. The court determined the activity was not charitable, because selling at fair value is not the standard for charitable. It also does not lessen the burdens of government because there was no evidence that the government considers the activity to be their burden. The court noted that the activities were the type normally carried on by a for-profit trade or business.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in IRC Section 501(c)(3). You have failed to meet the operational requirement, as further explained below.

You do not meet the operational test for exemption under IRC Section 501(c)(3) as you are formed to primarily conduct a trade or business. IRC Section 513(c) defines the term "trade or business." While Treas. Reg. Section 1.501(c)(3)-1(e)(1) does allow for an exempt organization to operate a trade or business as a substantial part of its activities, this activity must show that it furthers an exempt purpose. You were formed to provide an incubator type outlet for all types of entities to further their private interests. The services you provide are conducted in a manner similar to entities that provide facilities and administrative services for a profit. While you call the entities who participate in your consortium "members", your proposed financial information reflects income will only be generated from fees for services rendered by you. Therefore, you have not established that you are operating exclusively for an exempt purpose under IRC Section 501(c)(3). See also Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are like the organization described in Rev. Rul. 72-369 because you are operating in a manner similar to that of a trade or business. The organization described in this ruling was conducting services only for organizations exempt under IRC Section 501(c)(3). While you indicate you will provide assistance to governmental and non-profit entities, you are primarily formed to assist for-profit and other similarly formed entities. You are only providing services to organizations who are able to pay your fees. You have not given any indication that any of these entities may represent a charitable class. The fact that your consulting services may be provided for a fee that only covers your costs lacks the donative element as highlighted in this ruling and does not characterize your activities as exclusively charitable. Furthermore, the fact that your clients are developing enhanced capabilities for digital design and requesting your assistance is not sufficient to characterize the activity as exclusively charitable or indicates it is serving a public interest large enough to warrant exemption under IRC Section 501(c)(3).

You are comparable to the organization described in B.S.W. Group, Inc. v. Commissioner, where the court indicated that the provision of facilities and managerial services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Your activities constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. While charitable institutions often do provide services to other organizations, the cost is generally subsidized by contributors who do not receive anything in return. As previously indicated, your income is only expected to come from fees for services rendered by you to the entities that participate in your incubator type system. Also, your fees are set high enough to recoup all projected costs. Thus, based on the totality of the facts and circumstances, you are operated for a substantial nonexempt purpose.

You are also like the organizations in Abovo Foundation, Inc. v. Commissioner of Internal Revenue and New World Infrastructure Organization v. Commissioner of Internal Revenue in that you provide services to business and governmental clients for negotiable, market-based fees as your primary activity. Both were denied exemption for this reason, with both citing B.S.W. Group, Inc. v. Commissioner as part of their analysis. Throughout the above-mentioned tax court rulings, there is consistency in the idea that providing management consulting services to for-profit organizations, even if they also provide some services to governmental units and non-profits, is not an exempt activity and the type of activity normally carried on for profit as a trade or business. The fact that your clients include government agencies and some non-profit organizations does not affect this determination that you are not operating in an exempt manner with an exempt purpose. Providing facilities, administrative and managerial type on a regular basis for a fee is a trade or business ordinarily carried on for profit. Thus, you do not qualify for exemption under IRC Section 501(c)(3).

Conclusion

Based on the information submitted, you do not meet the operational test under IRC Section 501(c)(3). By providing facilities, managerial, and administrative services for a fee in the manner in which you provide it, you are operated primarily as a trade or business and for a substantial non-exempt purpose. Therefore, you do not qualify for exemption as an organization described in IRC Section 501(c)(3). Donations to you are not deductible.

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 this⁶ 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