



Department of the Treasury
Internal Revenue Service
Independent Office of Appeals
550 Main Street, Room 9-491
Cincinnati, OH 45202

Date: **AUG 03 2023**

Person to contact:

Name:

Employee ID Number:

Phone:

Hours:

Employer ID number:

Uniform issue list (UIL):

501.00-00

501.03-00

501.03-05

Release Number: 202343037

Release Date: 10/27/2023

Certified Mail

Dear :

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:

You have not established that you meet the requirements of Section 501(c)(3) of the Code. You are not operating exclusively for one or more exempt purposes because more than an insubstantial part of your activities is not in furtherance of an exempt purpose as provided under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You operated for the substantial non-exempt purpose of providing song-writing services to the public for a fee. The fee charged is set to cover costs and produce a profit. You do not solicit or receive donations, other from your founder. You have not demonstrated that the music service provides a community benefit. The music service was operated in a commercial manner. Further, under Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii), an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. You operated for the benefit of the private interest of your founder by promoting the founder's books and music.

Contributions to your organization are not deductible under IRC Section 170.

You're required to file federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. 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** 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](https://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 LTC must be for free or a small fee. To find an LTC 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

Appeals Team Manager

Enclosures:
Publication 1
IRS Appeals Survey

cc:



**Department of the Treasury
Internal Revenue Service**

PO Box 2508
Cincinnati, OH 45201

Date:
4/18/2022
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

B = State
C = Date
D = Program 1
E = Program 2
g dollars = dollar amount

UIL:

501.00-00
501.03-00
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 are incorporated in the State of B on C for the purpose of adding value to people's lives. You are formed to provide education on the D that is depicted in the book E, a book that was published by the director of the organization.

Your board of directors is comprised of only yourself. You accomplish your purpose by providing free audio podcasts to the public along with sessions via the internet. You are getting financial support from the sole director of the organization and the sale of books.

You also create music for individuals for a fee along with giving the buyer commercial rights. You pay the creator of the music for their services. You provide compensation to your director based off the organization's revenue.

You compensate the director in two different ways. You have the Introductory compensation where the director can receive a percent of the revenue brought by their introductory efforts. You also have the Affirmative compensation there are tiers to this compensation structure. Your first tier is determined by an internal estimate

by leadership. Your second tier is a performance bonus based off the first tier that can be changed by leadership. Your third tier is the same structure as the second tier.

Law

IRC Section 501(c)(3) exempts from federal income tax “[c]orporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.” No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation (Treas. Reg.) Section 1.501(c)(3)-1(a)(1) states that, 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(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.

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.

Rev. Rul. 61-170 held that an organization composed of professional private duty nurses and practical nurses that operates a nurses’ registry primarily to afford greater employment opportunities for its members doesn’t qualify for exemption under IRC Section 501(c)(3). “[T]he instant association is organized and operated primarily as an employment agency for the benefit of its members.”

Rev. Rul. 65-1 held that an organization formed to promote the development and design of machinery in connection with a commercial operation, and in connection therewith has the power to sell, assign, and grant licenses with respect to its copyrights, trademarks, trade names, or patent rights, didn’t qualify for exemption under IRC Section 501(c)(3). “[T]he development of a new machine, the patents of which may be licensed on a restrictive basis to selected manufacturers, is directed toward benefiting those particular manufacturers and any benefit to the public must be considered indirect.”

Rev. Rul. 69-383 held that a hospital that enters into an arms-length agreement with a specialist for compensation based on a fixed percentage of the departmental income doesn’t jeopardize its exempt status under IRC Section 501(c)(3). The ruling found that the agreement wasn’t a way of distributing the hospital’s net earnings to the radiologist, and since the radiologist was getting a percentage of gross revenues- as opposed to net revenues- the transaction wasn’t considered a joint venture.

Rev. Rul. 76-296 held that commercially sponsored research, the publication of which is withheld or delayed significantly beyond the time reasonably necessary to establish ownership rights, isn’t in the public interest and is the conduct of unrelated trade or business within the meaning of section 513. “By making specialized

information available to its members under the circumstances described above, the organization is serving the private interest of its members rather than a public interest.”

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), a nonprofit organization paid a for-profit corporation for the licenses to conduct "est" programs. The est programs involved training, seminars, and lectures in the areas of intrapersonal awareness and communication. The court held that denial of exemption was proper because the organization had a substantial commercial purpose that served private rather than public interests. Although the nonprofit claimed that it had no connection, direct or indirect with the for-profit, the court found that the for-profit exerted considerable control over the nonprofit's activities. The nonprofit's only function was to present to the public for a fee, ideas that were owned by the for-profit with materials and trainers supplied by the for-profit. Regardless of whether the payments made by the nonprofit to the for-profit were excessive, the for-profit benefited substantially from the operation of the nonprofit. The nonprofit was the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of the for-profit.

In The Church of Eternal Life and Liberty v. Commissioner, 86 T.C. 916 (1986), the court wrote that private inurement is strongly suggested where an individual or small group of individuals are the principle contributors to an organization and that individual or small group of individuals have exclusive control over the management of the organization's funds.

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 under IRC Section 501(c)(3). Because of the commercial manner in which the organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. The case noted that among the major factors that courts have considered in assessing commerciality are competition with for-profit entities, pricing policies, the extent and degree of below cost services provided and the reasonableness of financial reserves. Additional factors include whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.

Application of law

Based on the information in the administrative record, we hold that you do not meet the operational requirements for recognition of tax exemption under IRC Section 501(c)(3). You fail the operational test as indicated in Treas. Reg. Section 1.501(c)(3)-1(a)(1) and Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are not operated exclusively for one or more exempt purposes because more than an insubstantial part of your activities is not in furtherance of an exempt purpose as provided under Treas. Reg. Section 1.501(c)(3)-1(c)(1). 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. *Better Business Bureau of Washington D.C., Inc. v. United States*. Regardless of other exempt purposes, you are furthering a substantial nonexempt purpose by serving the private interests of the director.

You are similar to Rev. Rul. 61-170 because you are formed to promote a book that benefits and was written by the director of the organization. The organization in Rev. Rul. 61-170 failed to qualify for exemption due to the organization benefiting the members by primarily operating a nurse's registry.

You are similar to the organization described Rev. Rul. 65-1 which found that the organization formed to promote the development and design of machinery in connection with a commercial operation and in connection therewith has the power to sell, assign, and grant licenses with respect to its copyright, trademarks, and trade names, or patents rights. You provide commercial rights to individuals of music that was created by the organization and compensate the creator of the music.

You are similar to Rev. Rul. 69-383 by compensating the director of the organization based on revenue. However, you are dissimilar to Rev. Rul. 69-383 by compensating the director based on net revenue.

You provide music rights to individuals that was created by the organization. Your rights you provide to these individuals are a private benefit to them. You are similar to Rev. Rul. 76-296 because the organization made the publication of which is withheld or delayed significantly beyond the time reasonably necessary to establish ownership rights.

You are similar to *B.S.W. Group Inc v. Commissioner* because you are promoting the director's book which is similar to a for-profit business.

You are similar to *Est of Hawaii v. Commissioner*; you fail to qualify for exemption under 501(c)(3) because your primary activity is providing education on your book that was written by the director.

You are similar to *The Church of Eternal Life and Liberty v. Commissioner* because your organization has a sole director and the director donates g dollars to the organization.

You are similar to *Airlie Foundation v. Commissioner* because you are promoting the directors book in a commercial manner and giving rights to purchased music which constitutes private benefits.

Your position

You stated that the organization exist solely to add value to people's lives and is intrinsically charitable. Additionally, you assert that you qualify for tax-exempt status under IRC Section 501(c)(3) because the payments that are made to the director are within 501(c)(3) requirements.

Our response to your position

You are operated for a substantial nonexempt purpose because you serve a private interest rather than a public interest.

Your organization's compensation agreement is unlike Rev. Rul. 69-383 because your agreement is not an arm's length agreement.

As indicated in *est of Hawaii v. Commissioner*, the question for the court was not whether the payments made to the for-profit were excessive, but whether it benefited substantially from the operation of the applicant. The court determined that there was a substantial private benefit because the applicant was simply the instrument to subsidize the for-profit corporations and not vice versa. Irrespective of whether the payments to the director are reasonable, the director substantially benefit from the manner in which you operate. You are not operated exclusively for exempt purposes because you serve a private interest rather than a public interest.

You are comparable to the organization described in *Airlie Foundation v. Commissioner* in which the organization conducted activities that were for a non-exempt commercial purpose. You are acting in a commercial manner by promoting a book that was created by the director of the organization. Also, you give commercial rights to individuals for music that was created by the organizations allows the individual to privately benefit for a non-exempt purpose.

Conclusion

You do not meet the requirements for tax exemption under IRC Section 501(c)(3). Your operations further the charitable purpose of educating the public. However, your operations also serve the private benefit of the director and operate for a commercial non-exempt purpose. The private benefit to the director is not incidental to the accomplishment of your exempt purpose. Accordingly, you are not operated exclusively for exempt purposes. Despite any charitable purposes your activities may achieve, you do not qualify for recognition of tax exemption because more than an insubstantial part of your activities is not in furtherance of exempt purposes.

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