



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **200634041**  
Release Date: 8/25/2006  
Date: April 12, 2006

U.I.L. Nos.  
501.03-00  
501.03-30

Congressional Contact:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s): (1) you have failed to show that you have been organized as an organization described in section 501(c)(3); and, (2) you have failed to establish that you are being operated in order to further public rather than private interests.

The amount of time that has elapsed between the initial mailing of the proposed adverse determination and the issuance of this final adverse determination is attributable to the granting of several requests made by you for additional time in which to discuss how to correct problems with your organization and operation prior to our closing your case. Additional time passed while we attempted, unsuccessfully, to contact you in the aftermath of Hurricane Katrina.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please 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, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224**

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: June 2, 2004

U.I.L. Nos.  
501.03-00  
501.03-30

Congressional Contact: March 4, 2003

Employer Identification Number: \*\*\*\*\*

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You filed Articles of Organization (Articles) in the state of \*\*\*\*\* on \*\*\*\*\*. You describe yourself as a limited liability company (LLC), but you do not identify your members. You also fail to identify your members in your application and other documents that you have submitted.

Your Articles of Organization (Articles) state that you are organized solely and exclusively for charitable, religious, educational and scientific purposes. In Your Bylaws, dated \*\*\*\*\* , you state that you are established for charitable and educational purposes.

According to the Mission Statement you provided:

The mission of \*\*\*\*\* is to function as an advocate for the interest of the minority and women owned contractors in the state of \*\*\*\*\*. As an advocate organization, \*\*\*\*\* will seek to identify and offer solutions to any obstacles denying minorities and women owned businesses accessibility to their respected workplace.

According to your application, you are to serve as a \*\*\*\*\* model for promoting multi-agency collaboration and partnerships to improve your members' business practices and relationships. It further states that you will make the initial strides in soliciting the necessary assistance for your members to tap into the resources needed to achieve business success.

And, it states that in efforts to make opportunities more accessible for minority business you will establish building partnerships to assist in the development of business plans, profiles management practices and legal advice.

You stated that your time and resources will be allocated to the following activities in the percentages shown:

1. Develop a workshop in building a strong \*\*\*\*\* Program—\*\*%
2. Develop an Economic Development & Partnership Program---\*\*%
3. Develop a Training and Technical Assistance Program---\*\*%
4. Develop an Informational Network Program—\*\*%
5. Develop a Training workshop session with the federal, local city & state government agencies program---\*\*%
6. Develop a solid business plan & financial services program---\*\*%

In subsequent correspondence, you stated that the \*\*\*\*\* program would no longer be pursued because the City of \*\*\*\*\* no longer operated the program.

You state that your ultimate goal is to place the following categories of individuals in an employable situation with increased wages: poor “at risk” youth; poor, unemployed and underemployed adult males, dislocated workers, and single women that are head of household in an employable situation with increased wages. You further state that you intend to promote and develop minority businesses to hire the trainees. You explain that this is your primary reason for seeking exemption under section 501(c)(3) of the Code.

You state that you plan to conduct apprenticeship and training programs for youths when grants become available. You submitted a Proposed Training Curriculum which consists of an outline identifying four phases: Basic skills, job readiness training, job skills training and on the job training.

In the \*\*\*\*\* brochure that you furnished, you state that you are an advocate for minority contractors and that many contractors have benefited due to your resources and directions. You also state that you will provide hands-on training through internship and mentorship programs. The brochure identifies the following membership opportunities: bonding assistance, financial assistance, management assistance, procurement assistance, and technical assistance.

You have sponsored events such as a business opportunity fair; held seminars on business related topics such as disadvantaged business enterprises; and, conducted workshops such as for the SBA’s \*\*\*\*\* and its loan programs.

You state that you plan to seek grants for employment training and placement and for conducting workshops for businesses located in underutilized enterprise zones. In addition, you will provide training that will assist small contractors in managing, scheduling and estimating projects more efficiently.

You submitted a copy of a Memorandum of Understanding (MOU) for the \*\*\*\*\* Hope program. In the MOU, you are identified as being organized under the laws of the State of \*\*\*\*\* to advocate for the interest of minority contractors in the construction industry throughout \*\*\*\*\*. According to the MOU, you were to be a Joint Venture general contractor on the project with \*\*\*\*\* , an affiliate of a for-profit entity. Your contractors were to be construction, material suppliers and other entities drawn from your membership. You stated that the agreement has been revoked. You explained that your role was to ensure that \*\*% minority participation as mandated by HUD would be carried out by the developer, \*\*\*\*\* and its proposed prime contractor. You stated that the agreement was unique because it allowed a pro minority organization to have input at the implementation, monitoring and managerial level of a major project. You further stated that you would never participate in an arrangement of this nature unless it is directly under the oversight of the federal government.

You state that you would work to make bonding less of an obstacle to small disadvantaged businesses. You plan to conduct seminars and work with bonding agents that utilize Small Business Administration and State bonding programs. You further state that you will seek to change the mind set of disadvantaged business program directors and contracting officers to accomplish the objectives of the programs.

You state that you will monitor programs providing financial assistance to small disadvantaged and women owned businesses to ensure that they are implemented in a fair and equitable manner. You further state that you will seek mentors for your membership and other disadvantaged businesses in providing financial assistance.

You state that you intend to apply for grants to set up business development centers for the small disadvantaged community. Business plan and financial assistance programs would be available as part of the business development centers. You further state that you will use the expertise of your members and academia to provide technical assistance.

You state that some of the strategies that you are considering to ensure that your constituents receive a larger share of their respective marketplace include joint ventures between members; teaming arrangements with large firms, and mentor/protégé agreements between small disadvantaged firms and larger firms.

Section 501(c)(3) of the Code provides for the exemption of organizations organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(b)(1)(iii) of the Income Tax Regulations provides, generally, that an organization described in section 501(c)(3) of the Code shall submit a detailed statement of its proposed activities as part of its application for exemption.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations 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 section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes under section 501(c)(3) of the Code unless it serves a public rather a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of government; promotion of social welfare.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations defines the term "educational" as the instruction of the public on subjects useful to the individual and beneficial to the community.

In Better Business Bureau v. United States, 316 U.S. 279 (1945), the Supreme Court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy a charitable exemption.

In Old Dominion Box Co. v. United States, 477 F2d. 344 (4<sup>th</sup> Cir. 1973) cert. denied, 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See also Christian Stewardship Assistance, Inc. v. Commissioner, 69 T.C. 1037, 1042 (1978).

In Christian Manner International, Inc. v. Commissioner, 71 T.C. 661 (1979), the court held that for purposes of exemption under section 501(c)(3) of the Code, both the actual as well as the stated purposes for the existence of an organization and the activities it engages in to accomplish those purposes must be considered. What those purposes are and what purposes the activity or activities engaged in support are questions of fact. See also Pulpit Resource v. Commissioner, 70 T.C. 594 (1978).

In Rev. Rul. 59-6, 1959-1 C.B. 121, a professional association was held not exempt under section 501(c)(3) of the Code where its educational program is only an incidental part of activities that had as a principal purpose the professional advancement of the members as a group.

Rev. Rul. 73-128, 1973-1 C.B. 222, describes an organization that qualifies for exemption under section 501(c)(3) of the Code which provides educational and vocational training to unemployed and underemployed persons.

Rev. Rul. 75-284, 1975-2 C.B. 202, describes an organization that qualifies for exemption under section 501(c)(3) of the Code that provides high school graduates and college students with work experience in selected trades or professions.

Revenue Procedure 90-27, 1990-1 C.B. 514, sets forth procedures with regard to applications for recognition of exemption from federal income tax under sections 501 and 521 of the Code. Section 5.02 provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

An organization seeking exemption under section 501(c)(3) of the Code bears the burden of establishing that it satisfies the organizational and operational tests set forth in the regulations. Harding Hospital, supra. You have failed to meet this burden.

In order for an organization to be recognized as exempt under section 501(c)(3) of the Code, it must show that is both organized and operated exclusively for one or more of the purposes specified in that section. Section 1.501(c)(3)-l(a)(1) of the regulations.

LLC's, which are created under state law, are owned and governed by one or more members. An LLC can acquire and hold property in its name rather than in the names of its members. Each member's personal liability is limited to its investment in the LLC. There is typically an operating agreement (referred to as "regulations" in some states) for the LLC that is roughly equivalent to the bylaws and shareholder agreement of a corporation or a partnership agreement. The operating agreement governs the relationship between the members and the LLC and the relationship among the members. In addition, the operating agreement orders the LLC's affairs and the manner in which business is conducted. An LLC's membership affects its federal tax treatment and recognition of its exemption under section 501(c)(3) of the Code. Although you are described as an LLC in your articles, you have failed to prove that you operate as one. You have not identified your members and you have not submitted a copy of your operating agreement. Therefore, we are unable to recognize you as an LLC.

You state that you intend to assist individuals in finding employment. You also state that you intend to make apprenticeships and training programs available to youths. Providing relief to the poor and distressed can serve a charitable purpose. Section 1.501(c)(3)-1(d)(2) of the regulations. The same can be true for providing employment training and placement to certain charitable classes. See, Rev. Rul. 73-128, supra; Rev. Rul. 75-284, supra. Sections 1.501(a)-1(b)(1)(iii) and 1.501(c)(3)-1(b)(1)(v) require an applicant seeking exemption to submit a detailed statement regarding its proposed activities. Rev. Proc. 90-27, supra, further provides that an organization must do more than just state what activities it proposes to engage in: it must describe in sufficient details what its proposed activities are so that it can be determined whether the requirements of the Code section under which exemption is being sought will be satisfied by the organization.

You have not stated how much of your time and resources will be dedicated specifically to these activities. You have also failed to provide sufficient information regarding how you propose to conduct the programs. The Proposed Training Curriculum that you furnished, while sketching out what you plan to do, provides no specifics about how the training program is to be conducted: facilities to be used, training material, instructors, eligibility criteria for participants, curriculum contents, etc. And, you have not provided any specific information regarding the job placement efforts you will undertake for the other individuals you have identified (e.g., eligibility criteria, training, placement).

The presence of a single non-exempt purpose that is substantial in nature will destroy a charitable exemption. Section 1.501(c)(3)-1(c)(1) of the regulations; Better Business Bureau, supra. Your Articles and Bylaws contain general statements regarding your educational and charitable purposes. In your Mission Statement, promotional brochure, and other material you have identified your purpose as being to serve as an advocate for and to advance the business interests of minority and disadvantaged small businesses. While you have made general statements concerning the business disadvantage experienced by these groups, you have failed to establish that the activities conducted in connection with this mission would benefit a charitable class within the meaning of section 501(c)(3) of the Code so that a public rather than a private purpose would be served. Section 1.501(c)(3)-1(d)(1)(ii), supra; Old Dominion Box Co, supra.

In determining whether an organization satisfies the requirements for exemption under section 501(c)(3) of the Code, both the organization's actual and stated purposes for its existence and the activities that it conducts to further those purposes are considered. Christian Manner International, supra. A substantial amount of your time and resources appear to be dedicated to advancing the interests of businesses that you have identified as being at a business disadvantage rather than being used to serve a charitable class as described in section 501(c)(3). The mentoring arrangements, advocacy work, the business development center, and arrangements such as your proposed partnership in the \*\*\*\*\* Hope VI program appear to be directed towards protecting the interests of the business group you have identified as being disadvantaged rather than serving the general public interest.

You furnished information regarding seminars and workshops that you have conducted related to small business matters. Educational activities are recognized as serving to further a charitable purpose under section 501(c)(3) of the Code. Sections 1.501(c)(3)-1(d)(2) and



1.501(c)(3)-1(d)(3)(i) of the regulations. While the seminars and workshops may further an educational purpose, they are incidental to activities that serve to promote the interests of certain businesses. Therefore, your involvement in these activities does not warrant recognizing your exemption under section 501(c)(3). See, Rev. Rul. 59-6, supra.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service  
\*\*\*\*\* SE:T:EO:RA:T:2 (\*\*\*\*\*)  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Joseph Chasin  
Manager, Exempt Organizations  
Technical Group 2