

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

Date: **APR 24 2008**

Number: **200829054**
Release Date: 7/18/2008

UIL: 501.03-00
501.03-20
501.00-30

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

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.

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, 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,

Robert Choi
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

Date: MAR 6 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND

M = Organization
N = Related Company
A = President
B = Secretary
C = Vice President
D = Treasurer
E = Director
F = Director
x = date
y = state
z = amount

U.I.L. Number

501.03.00
501.03.20
501.00.30

Dear :

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

ISSUE

Is the organization organized and operated exclusively for charitable purposes under section 501(c)(3) of the IRC?

FACTS

You were incorporated on date x under the Nonprofit Religious Corporation Law in the State of y for religious purposes. Your Articles of Incorporation provide that you are organized and operated exclusively for religious purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Your Articles limit your activities to those permitted to be carried on by a corporation exempt under IRC 501(c)(3), and provide that upon dissolution, your remaining assets will be distributed to an organization which is organized and operated exclusively for religious purposes and which has established its tax-exempt status under Section 501(c)(3).

Letter 4036 (CG) (11-2005)
Catalog Number 47630W

Your specific purpose is "to provide a fundraising and communications platform for informational and inspirational messages for churches nationwide delivered via cell phone and email."

You will provide the technology platform that will be used much like a web-based e-mail service for pastors or church member to communicate informational and inspirational messages to their members through their cell phones, via text messages, and through email addresses. You licensed the proprietary integration technology and intellectual property associated with the technology you will use to perform your exempt purpose from N, which is owned by two of your Board members. N granted a free license in perpetuity to your organization.. You plan to expand the service to MMS (video messaging) when handset penetration, bandwidth and streaming costs are available. This will enable pastors to send video sermons to its members. You will be funded by the "monthly tax deductible subscription fee paid by the membership of the participating churches and parishes." The monthly fee is \$3.99 per subscriber.

The projected budgets you submitted show gross receipts of \$ for 20 ; \$ for 20 ; and \$ for 20 . The budgets do not show any other projected sources of support. You plan to give back approximately 45% of your revenue to the churches that generated the revenue based on the number of participants they have in the service.

The officers of the organization and their estimated salaries in year 2 are as follows:

A = President	\$ z
B = Secretary	\$ z
C = Vice-Pres .	\$ z
D = Treasurer	\$ z
E = Director	\$ 0
F = Director	\$ 0

B and F are the parents of A. C and A are business partners in N. D is the son of E.

LAW

Section 501(c)(3) of the Code provides for the exemption from federal income tax:

"Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of (or opposition to) any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that to be tax exempt, an organization must be both organized and operated **exclusively** for one or more exempt

Letter 4036 (CG) (11-2005)
Catalog Number 47630W

purposes specified in section 501(c)(3) of the Code. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the Regulations 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 to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

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(e)(1) of the Regulations states that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) of the Code.

Section 170 of the Code allows for the deduction of any charitable contribution made within the taxable year.

Section 1.170A-1(h) of the Regulations states that no part of a payment that a taxpayer makes to or for the use of an organization that is consideration for goods or services is a contribution or gift within the meaning of section 170(c) unless the taxpayer intends to make or makes a payment that exceeds the fair market value of the goods or services received.

In Revenue Ruling 69-528, 1969-2 C.B.127, it was held that an organization that provided investment services on a fee basis to unrelated non-profit organizations did not qualify for exemption under Code section 501(c)(3). It was held that the organization was engaged in a trade or business. The ruling indicates that the organization was engaged in a trade or business "that would be unrelated trade or business if carried on by any of the EO's on whose behalf it operates."

In Revenue Ruling 71-529, 1971-2 C.B. 234, an organization that assisted member colleges and universities in fund management was held to qualify for exemption under section 501(c)(3). In this ruling, the member organizations controlled the organization through selection of its governing body from among representatives of all member institutions. Also, members paid only nominal fees; substantially all of the organization's expenses were paid by grants for other charitable organizations. It was held that the applicant achieved charitable purposes by providing an essential service for charges "substantially below cost."

In Revenue Ruling 72-369, 1972-2 C.B. 245, it was held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code. The ruling states, "Providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services are provided at cost and solely to exempt organizations is not

sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code."

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), describes an organization which provided management consulting services for a fee to nonprofit organizations, some of which were exempt and some of which were not. The nonprofit organizations engaged in various rural-related activities designed to improve health, housing, and vocational skills. The Court held that the organization's activities constituted the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

APPLICATION OF LAW

The information submitted indicates that your primary activity will consist of providing the necessary technology for pastors to communicate with its members for a fee. Providing such services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that (1) these services will be provided solely for churches, that (2) such services will assist such organizations in carrying out their public or exempt purposes, and that (3) part of the subscriber payments will be donated back to the participating churches are not sufficient to characterize such services as charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

You are similar to the organizations described in Rev. Ruls. 69-528 and 72-369 in that you plan to provide a commercial-type service for a fee to unrelated exempt organizations. Both rulings held that providing a service (managerial and consulting services and fund management) on a regular basis for a fee is a trade or business. The fact that the recipients of the services were non-profit or tax-exempt entities did not change the character of the services they provided. You are also similar to the organization described in B.S.W. Group, Inc. v. Commissioner.

You can be distinguished from the fund management organization described in Rev. Rul. 71-529 in that the churches you plan to service do not have any control over your organization. You do not anticipate receiving grants from other charitable organization that support your activities. You have not demonstrated that the fees you plan to charge are substantially below cost as the organization did in this ruling.

The technology based communications you plan to provide to churches and their members is very similar to the services provided by for-profit communication corporations. You state in your application that you will provide "the technology platform that will be used much like a web-based email service..." The fact that the technology will be used by churches to relay religious material does not change the character of the activity from commercial to charitable. (Ref. Rev. Rul. 72-369 supra) You cannot inform your subscribers that their monthly membership fees to your company are tax deductible as the members are receiving something in return for their "contribution." (Regulations 1.170A-1(h))

CONCLUSION

You do not qualify for federal income tax exemption under IRC 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure:
Pub 892
Form 6018