



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200935043**
Release Date: 8/28/2009

Date: June 3, 2009

UIL: 501.00-00; 501.33-00

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.

Since 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.

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

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



DEPARTMENT OF THE TREASURY
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Date: June 3, 2009

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Legend

B = State

C = Date

D = City

E = Country

F = Board member

G = Board member

H = Board member

J = Law Firm

K = Company

L = Employee

M = Applicant

O = Website

P = Country

t = \$ amount

u = \$ amount

v = \$ amount

w = \$ amount

x = \$ amount

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.

Facts

You, M, were formed in B on C. Your stated purposes listed in the Articles of Incorporation are as follows:

- a. To function as a forum and meeting place in D for accredited investors and representatives of financial organizations ("_____") and representatives of E early-stage technology companies in a professional bi-monthly meeting club event in D. The companies presenting in M and seeking investments will be screened by M.
- b. In addition to becoming a 501(c)(3) in itself, in each _____ club meeting, M will provide one E-related philanthropy, accredited in the US as a 501(c)(3) organization, the

opportunity to promote its cause and present its mission to the attending. M will dedicate funds beyond its operating expenses and reserves to support such philanthropies at the end of each budget-year.

Your 501(c)(3) purpose, as stated in your Form 1023 is to help the E economy grow through charitable economic development. The United States Central Intelligence Agency, and the International Monetary Fund, both consider P a developed country.

You are a membership organization having both individual and corporate members. An individual membership is open to any accredited investor. An accredited investor is defined under Rule 501 of the Securities and Exchange Commission (SEC) regulations, as "any natural person whose individual net worth or joint net worth with that person's spouse at the time of his purchase exceeds \$1,000,000; has a reasonable expectation of reaching the same income level in the current year."

An entity an individual represents qualifies for membership if it is an accredited investor as defined under Rule 501 of the SEC regulations and the individual is attending as a representative of the corporation and not in an individual capacity.

Corporate level memberships are open to accredited investors, defined under Rule 501 as follows:

1. Any entity whose equity owners are accredited investors,
2. A corporation, partnership, business trust, limited liability company or Section 501(c)(3) organization with total assets of 5 million dollars.
3. A Broker Dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934. A bank, savings and loan association as defined in Section 3(a) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity.
4. An insurance company as defined in section 2(13) of the Securities Act of 1933.
5. An investment company registered under the Investment Act of 1940 or a business development company as defined in section 2(a)(48) of that Act.
6. A plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, if such a plan has total assets in excess of 5 million dollars.
7. An employee benefit plan established within the meaning of ERISA, provided that the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment advisor or that employee benefit plan has total assets in excess of 5 million dollars or if the plan is self directed with investment decisions made solely by persons that are accredited investors.

A person attending a meeting as the representative of a corporate member cannot

simultaneously attend in an individual capacity.

There are also 2 levels of membership, consisting of Platinum and Gold. The Platinum membership costs \$1500 and entitles the member to one complimentary pass and two reduced price guest tickets for each of your events, written acknowledgement on all marketing materials (including those on your web site) as a platinum member, access to the past and future company presentation data base and access to information on all members.

The Gold Membership costs \$750 and entitles the member to one complimentary pass and one reduced price guest ticket for each event, written acknowledgement on all marketing materials (including those on your web site) and access to the past and future company presentations as well as the membership-only section of your web site including the data base.

Membership is not required for participating in your activities but members will have benefits consisting of access to more information prior to and after club meetings as well as the benefits associated with the platinum and gold memberships.

You bring together US investors primarily with E early stage technology companies in a bimonthly event in D. These companies will operate in the fields of life sciences, internet, telecom, software, clean tech, security and defense. You expect to receive 30-50 applications from E early stage companies of which only the most promising companies will have the opportunity to make presentations to potential investors at the bimonthly events. The early growth companies are located by your management team and screened by your hand picked 12 person pool of well established professionals. A two member screening committee reviews and selects the most promising early stage companies in each specific technology area to make presentations at meetings.

To be eligible for consideration, the early stage company must first meet the criteria to register in your database located on your website. The company must complete an application and provide detailed information concerning technological innovation, intellectual property protection, financial reports and projections, corporate and contractual governance, management and development teams, and must pay a registration fee of t. As part of the application process, the company must include a 2 year business forecast, the requested investment amount, the legal and IP Status, a marketing plan, and founders and management team background information. The early stage company may also submit a 10-15 slide Power Point presentation. If approved, the fee is processed; the application is forwarded to one of your 2 member screening teams. The screening team reviews the application and will determine if the company meets the criteria to present at the bimonthly meeting. At the end of the process, the screening teams meet and make final decisions and will invite the 4-6 most promising companies to make presentations at your next meeting. Those chosen will pay an additional presentation fee of t.

Those selected will present their business plans in club meetings before 40-50 investors, who have the financial ability to invest in early stage E technology.

In addition, you will give one E related philanthropy the opportunity to address the assembled investors to solicit funding. In order to be considered, an organization must submit a 2-page summary of its activities showing that it is involved in a worthy E cause; the organization must

also exhibit a transparent accounting system and efficient operations. The 2 page summary must also describe the impact the organization has made and its funding needs. A registration fee of u is processed only after it has been selected.

A typical meeting consists of a cocktail reception which has an allotted 30 minute time period, 2.5 hours devoted to presentations by four E start up early stage technology companies alongside one E focused philanthropy. After the presentation, Investors will have the opportunity to pose specific questions to the companies who have presented; then the will be asked if they would like to meet with any of the companies in a separate meeting place on the following day. At these meetings who are interested in making investments in specific companies that have made presentations decide whether to make a firm commitment to conduct due diligence and proceed to an actual investment. If there is no firm commitment at this time, notice is sent to your members, who are then free to approach the company directly and negotiate an investment on an individual basis.

The board consists of three members: F, G, and H. In later correspondence, the applicant began referring to H as L. G and L are partners with the law firm of J. (The firm specializes in commercial law; this includes corporate mergers and acquisitions, corporate financing, contracts, intellectual property, and anti trust, litigation and commercial real estate.) The law firm provides you services at 50% of its customary billing rates; however G's individual services are provided free of charge. Information obtained through correspondence shows that that F owns K, an advisory investment company in D. You operate from the offices of K rent free. K does not provide services to you. Moreover, your members will not be required to make use of K's services.

You are primarily operated by volunteers who serve on the Executive committee; these volunteers assist in screening business plans for investment potential from dozens of E early stage companies. The volunteers are professionals involved in E technology and are well established.

You use an independent contractor as an administrator. This administrator will work approximately 100 hours per month and be compensated v per year.

You also have a comprehensive website (O) which lists the services and benefits to members and provides early stage technology companies with information about your program and the steps involved in becoming registered in your data base. The "About" section of O reads:

M is the first club established in the US, exclusively focusing on bringing US investors with E early stage companies in an upscale professional environment.

It further reads:

There are many ways to help P. As business people, we have focused on companies from the sectors in which E technology is currently demonstrating exceptional abilities, including life sciences, Internet, electronics, telecom, software, clean-tech and homeland security. Our hand selecting executive committee carefully evaluates and screens the numerous companies applying to M, eventually choosing four to five most promising companies to present before our esteemed group of . M's members are given valuable benefits such as access to M's members' online data base alongside an opportunity to hear about the selected companies in Club meetings.

All members or guests of M are not in the business of making profits. Our sole purpose is to promote our philanthropic causes. We have identified an opportunity to provide US with an exciting format to support P. Doing good for P while doing well for yourself is no longer a vision.

The "Who is M Section" reads:

"A core value of M's club is to encourage philanthropic contribution alongside deal making; therefore at each meeting a prescreened E related charitable cause will present its case for the support and consideration of the members.

You are supported by membership fees, registrant fees, and corporate sponsorship. There are 2 levels of sponsorship - Emerald and Diamond. An Emerald sponsorship costs w and entitles the sponsor to logo acknowledgment on your website, a one page informational flyer in all club folders, an invitation to present a 3-minute sales pitch along with an information desk at a club meeting, acknowledgment of your representative in the greetings of six events, and one complimentary pass and one reduced price ticket for each event.

Diamond sponsorships, limited to firms in specific fields having to do with finance, such as commercial banks, accounting firms, venture capital firms, law firms and consulting firms, cost x. Diamond sponsors receive the same benefits as Emerald sponsors.

Law

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from Federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 501(c)(3)-1(a)(1) of the Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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). 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) and (d)(1)(ii) of the Regulations state that an organization whose net earnings inure to the benefit of private shareholders or individuals or which is operated for the benefit of private interests is not operated exclusively for exempt purposes.

Revenue Ruling 61-170, 1961-2 CB 112 describes a nurses association which maintained an employment registry primarily for the employment of members. It was not granted exemption as a

charitable organization under Section 501(c)(3) since it was engaged in rendering particular services for individual persons.

Revenue Ruling 68-117, 1968-1 CB 251 describes an organization that was formed and operated to assist needy families in "developing" countries that qualified under section 501(c)(3). This organization conducted regular guided self help programs as well as assisted in arranging credit for farmers on reasonable terms with a realistic repayment schedule.

Revenue Ruling 74-587, 1974-2 CB 162 describes an organization that qualified under Section 501(c)(3). The organization was formed to relieve poverty, eliminate prejudice, reduce neighborhood tensions, and combat community deterioration through a program of financial assistance in the form of low cost or long term loans to, or the purchase of equity interests in, various business enterprises in economically depressed areas.

Revenue Ruling 76-366, 1976-2 CB 144 describes an organization that enabled prospective investors to make sound investments by the mutual exchange of investment information. The organization carried on not only educational activities but other activities directed to the support and promotion of the economic interests of its members. It did not qualify for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, 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.

SICO Foundation v. United States 295 F.2D 924 (Ct. Cl 1961) involved a nonstock corporation that owned controlling interests in several businesses engaged in selling and distributing petroleum products. Its net income was distributed to teachers colleges for scholarships. The court concluded that although the organization gave its profits to charitable organizations, it did not qualify for exemption under Section 501(c)(3).

In American Campaign Academy v Cm 92 T.C. 1053 (1989), the court found that an organization that trained individuals for careers as political campaign professionals was denied exemption because of the secondary benefit accruing to entities of a political party and its candidates, since all its graduates became employed by or consultants to these entities and candidates. The court concluded that the school was not primarily engaging in activities that accomplish educational purposes because it benefited private interests to more than an insubstantial degree. The court accepted the IRS's argument that where the training of individuals is focused on furthering a particular targeted private interest, the conferred secondary benefit ceases to be incidental to the organization's exempt purposes.

Application of Law

You do not meet the organizational test of Section 1.501(c)(3)-1(a)(1) of the Regulations because your purposes are broader than those permitted. Specifically, you provide services to your members to enable them to make investments. Consequently, you do not meet the organizational test described in Section 501(c)(3).

You are not as described in Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations because you are not engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. Further, more than an insubstantial part of your activities are not in furtherance of an exempt purpose.

You are not as described in sections 1.501(c)(3)-a(c)(2) and (d)(1)(ii) of the Regulations because you are operated for the benefit of private interests.

You are operating like the organization described in Revenue Ruling 61-170, 1961-2 C.B. 112 because you are primarily engaged in the performance of specified services for your members. For example, your website indicates that you rigorously prescreen the business plans of startup businesses in order to find the most promising investment opportunities for members.

You maintain that you are operating to grow the economy of P. However, you are not like the organization described in Revenue Ruling 68-117, 1968-1 CB 251. The United States Central Intelligence Agency, as well as the International Monetary Fund, both considers P a developed country.

You are also not like the organization described in Revenue Ruling 74-587 1974-2 CB 162. You primarily select recipients of your services based on the potential return on investment and not on any community benefit; whether or not start-up businesses are located in an impoverished area of P is not even considered.

Your operations appear to be similar to those in Revenue Ruling 76-366, 1976-2 CB 144 because your activities are directed to the support and promotion of the economic interests of your members. Moreover, the statement on the website "*M's members are given valuable benefits such as access to Investor's members' online database alongside an opportunity to hear about the selected companies in Investor club meeting*" further confirms that you are operating to provide investment opportunities to members.

Along with permitting persons from start up businesses to solicit financial backing from your members, you are also allowing one representative from a 501(c)(3) charity with a mission and activities in P to make a presentation at your meeting in order to solicit donations. The charities, like the startup businesses, must pay a fee to be considered, then undergo a rigorous screening process and compete with other charities. You have not established how allowing a charity to solicit donations from your members accomplishes a purpose described in Section 501 (c)(3).

You are similar to the organization described in SICO Foundation v. United States 295 F.2d 924. You assert SICO's position for exemption based on donating excess revenue to charity. This by itself is insufficient to warrant tax exemption.

Applicant's Position

You believe you qualify under Section 501(c)(3). You wrote that you are incorporated as a charitable and educational organization with no profitable intentions. Through bringing together E computer scientists, entrepreneurs, not for profit organizations, US philanthropists and

potential investors, you will achieve your goals of developing a stable and growing economy in P. You reiterate that there are no profitable or non exempt purposes which you intend to pursue; all net earnings will be distributed to a not-for-profit organization.

You state that one of the primary activities is to encourage and emphasize contributions and active participation in not-for-profit organizations at your events, alongside your message of economic development in P; thus you believe you qualify under Section 501(c)(3). Additionally, you were founded to support P. Because of the constant fear of war and terror, P relies in a large part on assistance from overseas in order to assist in its growth; you intend to facilitate the same.

Furthermore you state that a valid 501(c)(3) purpose is the "advancement of science" and will achieve this purpose by seeking to further advanced computer science and technology in P. You describe how many of today's current technologies were invented in P. You will continue to serve the E economy by contributing to new scientific technology and helping it grow.

Moreover, you state that your intent to bring together Americans who wish to donate and invest in E companies and charities accomplishes a 501(c)(3) purpose. For a large number of charities, presenting at meetings will enable them to solicit a significant amount of revenue. With your assistance, charities will interface directly with potential donors who will hopefully take an active role in their growth and development. You then wrote that you seek to illuminate and educate American investors as to the needs of computer knowledge and high tech industry in P.

You are open to any potential business leader who is interested in contributing to E organizations. You also provide opportunities for lesser known E entrepreneurs and not-for-profit organizations that would not have the opportunity to seek funds, the chance to present and advance their causes and ideas to a US audience; the real opportunity is provided for the small business entrepreneurs and not-for-profit organizations by giving them access to foreign and domestic investment opportunities.

In response to the Service's assertion that you are operating for the benefit of members, you maintain that your main purpose is to advance science and the economy in P and thus you are not similar to the organization described in American Campaign Academy 92 T.C. 1053 1989. You assert that your investment activity is merely a tool used to achieve this purpose. Any secondary benefits that inure to the investors do so because of your intent to contribute to the success of the E economy, including both P's not-for-profit sector and various science sectors of its economy. You believe that the amelioration and growth of the E economy by far outweighs any particular benefit that inures to members. You also dispute the contention that you have a substantial non-exempt purpose like the organization described in Better Business Bureau of Washington, D.C., Inc. v. United States. You maintain that your purpose fits entirely within the exempt framework, as you seek to advance science in an innovative way. By connecting various start up companies with investors, you will enable companies to bring these innovations and scientific progress to the market place.

Our Response to Applicant's Position

You failed to provide any information from which it can be concluded that your activities further or advance a charitable purpose.

First, your financial support to organizations described in Section 501(c)(3) is an insignificant part of your total activities. Your charitable giving is limited to your annual excess revenues; any public benefit resulting from this is tenuous compared to the service of private interests. Nor are you serving any public and charitable purpose by allowing one hand-picked charity, for a fee, to solicit donations at your organization's meetings.

Second, you substantiate that helping P's economy grow accomplishes an exempt purpose described in Section 501(c)(3). While it may be true, that certain organizations which ultimately accomplish exempt purposes through the provision of assistance to for-profit businesses may qualify as an economic development corporation described in Section 501(c)(3), these organizations must demonstrate that by providing assistance to new businesses, they are achieving an exempt purpose by relieving the poor in an area considered to be depressed. You have not demonstrated that the services provided to help establish private businesses would ultimately help relieve the poor and distressed in a blighted area. P is not an area considered to be blighted or distressed and you have not shown how your activities will ameliorate the conditions of distressed members of that country.

Third, although the advancement of science may promote a purpose exempt under Section 501(c)(3), you have not explained how providing technology start up companies a forum to seek investments from your members advances science.

Your investment-fostering activity is not "merely a tool" to achieve exempt purposes. You do not agree that you are like the organization in American Campaign Academy v Cm 92 T.C. 1053 (1989). However, like the organization in the court case, at least one of the intended classes of beneficiaries of your activities are not members of any charitable class. Neither your members nor other participating accredited investors nor the early stage technology entrepreneurs are members of a charitable class. Because the benefits of your program are targeted to these classes of persons, they could not be considered incidental to the accomplishment of any exempt purpose, even if you could demonstrate that your activities tended to benefit one or more charitable classes as well as these purely private interests.

Conclusion

Based on the facts that you have provided, we conclude that you are not organized and operated for exempt purposes within the meaning of section 501(c)(3) of the Code, because you are primarily operating for the economic benefit of members.

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 accompanied by the following 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."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

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.

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