



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **200936040**  
Release Date: 9/4/09  
Date: June 8 2009  
UIL Code: 501.03-30

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.

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,

Rob Choi  
Director, Exempt Organizations  
Rulings & Agreements

**Enclosures**

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: Apr 14 2009

Contact Person:

Identification Number:

Telephone Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

**UIL:**

501.03-30  
501.33-00  
501.35-00  
501.36-01

M = Applicant  
C = Organization Nme  
D = Organization Name  
E = Person  
F = Organizaton Name  
O = State  
Q = State  
X = Organization Name

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**

Do you, M, meet the qualifications for exemption under section 501(c)(3) of the Internal Revenue Code?

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### Facts

M is incorporated under the laws of the State of O, but conducts operations in the State of Q. Three of the four original directors were related to the founder and owner of F. M provides dog training for clients. M was initially formed as a cooperative organization and formed with a related governing board, stating the "PROPERTY RIGHTS AND INTERESTS OF EACH MEMBER ARE EQUAL", listing each member of the governing body and their addresses. M initially applied as a private operating foundation. The founder, E, also has a for-profit which also provides dog training. The for-profit business, advertised as C and named F, provides dog training in homes. For M's application, the animals will be boarded and trained at the facility. F also operates a boarding business. Through F, E began a process to obtain substantial grant funding to fund a non-profit portion of the E's activities. The anticipated revenue to be generated through M, the non-profit was projected as \$1,000,000 per year.

M entered into negotiations and contracts with X, a for-profit company who incorporated M. The terms of the negotiation are that M is to pay a \$5,000 service fee to X in exchange for assistance with obtaining a grant between \$500,000-\$600,000, in the name of the founder. M would pay \_\_\_\_\_ as a retainer and \_\_\_\_\_ when the grant was awarded. A second, signed contract requests \$425,000 in funding in the name of E with an agreement of \$5,000 paid by the founder with \$1,500 actually provided and \$3,500 additionally provided when the grant was awarded. The retainer provided for services to the founder for a period of 12 months from the date of the contract, which has now expired. The third, signed contract was for \$6,500 with \$2,000 actually provided for the application process, and an additional \$4,500 when M received grant money. Therefore, M executed a contract and provided \$3,500 in exchange for \$425,000 in grant money to be received, with an additional \$8,000 only to be paid by M in the event that it received actual grant funding. The fourth, signed contract is for supplemental document services associated with the application process "that may be required" for \$7,500. This last supplemental service had an accompanying statement, "I authorize [X] to a one time debit from your checking account for the amount indicated above, I understand and agree that the services I have ordered/purchased are not a consumer purchase regulated under state/federal consumer fraud statutes nor a product/service that can be returned for a refund. Therefore, all sales are final. [X] is not responsible for any illegal acts, misuse, or abuse of this corporation." More than 12 months have passed from this fourth contract as well. Thus far, M has paid \_\_\_\_\_ in service fees to X.

E, the founder states he was encouraged to pay the remaining \$7,500 for the supplemental services and documentation in excess of the Form 1023 application because through correspondence with X he became aware of the opportunity to receive

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grant monies by preparing a request for proposal for D, but the understanding was he needed to successfully complete the 501(c)(3) status to receive the money, which had already been assigned to the IRS and was being worked at the time. Late into the process, in a letter dated 9/17/20 , M informed the specialist that as of late July, 20 that it had filed a consumer complaint form. However, the purchase for paralegal services and guidance was not a consumer purchase. By that time, each of the signed service contracts had run well past the 12 month time frame.

The application listed \$250,000 for compensation of officers, directors and trustees, and \$50,000 for other salaries and wages. Occupancy expenses are anticipated at \$300,000 per year. As three out of the four governing body members were related, the founder and president (E), the brother of the founder and the sister who was the treasurer. Although M has responded that none of its officers or directors is currently compensated, compensation may be paid in the future, and compensation will be based on funding.

E's for-profit business was anticipated to continue to perform dog training services for paying clients in their homes. Those that can afford the services will be handled by the for-profit organization, C. Those that cannot afford the services will be handled by M. M is to be compensated through grants and expenses and includes compensation to the founder. M states in its letter dated 2/1/20 , "At this time, we are a for profit corporation." M states, "I have witnessed an increase in the number of potential clients who were in need of my service, yet were not financially secure or did not have the discretionary income to pursue training." M states that the founder and President, E, trains dogs in the home through an incorporated entity under his name: "[F] is a company that provides Obedience Training and protection training in the home." M "will accept all dogs despite the nature of their behavior problems." "Boarding in training and in kennel" and "weekly "on site group training classes" will be conducted.

M, named after the President and founder and bearing the family name, "will provide transportation to pick up the animal, train the animal at the Kennel and then return it to the Owner."

You stated that, M will "accept all dogs despite the nature of their behavior problems. " You do not provide specialty training but will accept all dogs based on criteria established by you. The pet-owners do not have to be permanently low-income, but can be temporarily unable to pay based upon criteria established by you. As you stated, "Upon funding, we will provide service to anyone in a domestic violence situation as well as displaced pets as a result of a natural disaster: floods, fire, etc." You will provide "Boarding and training, as well as Group training". You state you will provide training to companion pets and provide the example of training such as, training a dog not to bite and providing training so

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that a dog does not defecate in the home. You, M, stated you will provide “dog training, care, education and/or health maintenance” and will operate a “Boarding Program”. You state you will provide “boarding, rehabilitation, maintenance, care, including shot clinics and pet care classes. You, M, will “modify behavior” of the dogs. You state, “For example, a pet that chronically defecates throughout the home causing a major health risk, or a pet whose aggressive behavior, a pet that has a tendency to bite, could result in significant legal liability.” You, M, state, “We will board any dog whose owners are in financial or physical distress and cannot attend a weekly group training program. We will board any dog who may possess the propensity to be aggressive and the owners cannot control it.”

**Law**

Section 501(a) of the Code provides, in part, that organizations described in section 501(c) are exempt from federal income tax. Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it 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 or operational test, it is not exempt.

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 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(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for any of the purposes specified in section 501(c)(3) unless it serves public rather than private interests. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests. Organizations must be formed for purpose of community benefit.

Rev. Rul. 59-310 held that swimming pools open to the entire community with provided in a low-income area as a public facility may provide community benefit by serving public interests.

Rev. Rul. 73-456 held that a training center established to instruct the blind to properly function with the aid of guide dogs met the operational test under IRC 501(c)(3).

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Rev. Rul. 74-194, 1974-1 C.B. 129, held a nonprofit organization formed to prevent the birth and eventual suffering of unwanted animals was exempt under 501(c)(3) by preventing cruelty to animals.

In Ann Arbor Dog Training Club, Inc. v. Commissioner, 74 T.C. 207 (1980) the court held that the training of animals does not come within the meaning of "educational" as set forth in Section 501(c)(3) of the Internal Revenue Code. The organization held dog obedience training classes, awarded the dogs a degree after completion of the course and also awarded them prizes at show events. While the owners of the dogs received some instruction as to the training of dogs, it was the dog that was the primary object of the training and evaluation.

Rev. Rul. 71-421 held that dog club, formed to promote the ownership and training of purebred dogs and conducting obedience training classes, was not exempt under section 501(c)(3).

### **Application of Law**

You are not as described in section 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the Regulations because you are not operated exclusively for exempt purposes. Specifically, dog training and boarding in the manner you describe are not exempt purposes as described in IRC section 501(c)(3).

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you are not operated exclusively for 501(c)(3) purposes as your purposes substantially benefit E and therefore, serve private interests.

You are unlike Rev. Rul. 59-310 because you are not providing a community recreational facility or providing a community benefit. You instead train pets in group training sessions and board pets at a central location for private individuals. Hence your activities do not provide benefit to the entire community.

You are unlike Rev. Rul. 73-456 because you are not training disabled individuals to function with the aid of guide dogs. The facts show that the object of your training is the dogs, not the individual. Even though you indicated that some of the dogs you train may be owned by disabled individuals, your focus is on selecting a dog in need of training and not on the provision of necessary services for the disabled individual.

You are unlike Rev. Rul. 74-194, 1974-1 C.B. 129, because you were not formed to prevent the birth and eventual suffering of unwanted animals. The dogs you train are

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not unwanted, unborn, or non-owned. They are companion animals owned by clients who are in need of or desire dog training services and/or boarding.

You are similar to Ann Arbor Dog Training Club, Inc. v. Commissioner, 74 T.C. 207 (1980) because you too hold dog obedience training classes. Also, similar is that it is the dog that is the primary object of the training and evaluation.

You are similar to Rev. Rul. 71-421 because you too conduct obedience training for dogs. You, are similar to these holdings in that you, M, provide dog training and boarding and kenneling of dogs.

### **Applicant's Position**

M asserts a differentiating factor is that it will limit its service to a charitable class, the home-bound, low-income individuals, and victims of domestic violence.

### **Service Response to Applicant's Position**

You, M provided a varied description of your clients. The clients' description ranged from anyone who cannot afford the services of F, to victims of abuse, to shut-ins, to the elderly, the homeless and victims of disaster. You state that you will board "any dog who may possess the propensity to be aggressive." Even though "some" of the pet owners may themselves be defined as a "charitable class" the facts continue to show that the object of your training is the dog, not the individual. Even if you were to demonstrate that the object of your training would be the individual, you have not developed specific objective criteria that will ensure that you provide services only to a charitable class of individuals or that your services will expressly provide for their relief or distress. Furthermore, you paid a substantial price to a for-profit entity for your exemption, including contingency fees based upon the expectation of lucrative contracts in return. Your contracts demonstrate the expectation of the private benefit of the founder who owns a similar for-profit dog training business. Although the term of your service contract has expired, and you have now filed a complaint, your formation document and organization structure as a family operated business show private benefit that is intended to compensate insiders. Although the criteria and application changed several times, the primary difference between the operations of the for profit and the non-profit is that if the clients can afford normal and customary charges - the for profit handles the client. If the client can not afford the services - then the non profit will. The for profit business and the non profit business both offer dog training services. The for profit will, for clients that can afford the services, go to clients home and train their dogs. The non-profit will, for clients that cannot afford the services, will train the dogs in their facility and board the dogs at their facility. Precedent clearly provides that dog



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obedience training is not an IRC 501(c)(3) purpose.

**Conclusion**

Therefore, you were not formed for the purposes of and operated exclusively for educational and charitable purposes as defined in of Section 501(c)(3) of the Internal Revenue Code or the Regulations pertaining thereto. You do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code.

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

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947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://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 S. Choi  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure, Publication 892