



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201023058**
Release Date: 6/11/10
Date: March 18, 2010
UIL Code: 501.03-00

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 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):

You failed to establish that you are organized and operated exclusively for an exempt purpose described in section 501(c)(3). You failed to establish that your program constitutes an activity that furthers a charitable purpose by providing relief to persons who are poor and distressed or underprivileged or accomplishes any other exempt purpose specified in section 1.501(c)(3)-1(d)(2) of the regulations. Further, you have not established that you are not organized or operated for the benefit of private interests. Accordingly, you do not qualify for exemption under section 501(c)(3) and, therefore, cannot be classified as a private foundation or a public charity.

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 91st 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,

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: May 21, 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B =
M =
Date =
State =

Dear

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

You were incorporated by B on Date in State and filed an application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code (Code). Your three directors are all members of M, a church.

Your application states that you are organized exclusively for charitable acts such as providing food, clothing and shelter for needy families or persons. To help those in need, you plan to construct homes, lend used cars, and offer clothes, food and other monetary assistance for housing, education, healthcare and pro-bono legal representation for immigration proceedings for selected beneficiaries. You state that you particularly plan to assist:

1. Single parents who have been domestically abused,
2. Individuals who are unemployed and have difficulties with their families and children,
3. The homeless, and
4. Whoever is in need.

You provided a couple of examples of your services: You loaned three vehicles with prepaid auto insurance for six months to disadvantaged families. You state that you also paid all of the expenses to bring an individual from Honduras to the U.S. for eye surgery.

You state that since B is a well-known celebrity, B receives requests for assistance by phone, email, letters and church contacts. You added that M provides you with information and tells you who is in need. M's pastor provided a letter confirming B's close relationship with the church. In the letter, the pastor explained that he becomes aware of people in need and refers those persons to you. Once a referral is made, one of your officers will conduct a site check in order to verify that the potential recipient is in fact in need of some assistance. You state that the site check will also provide you with the ability to gauge how much and/or what type of assistance you will provide. You do not have any particular criteria or screening process that you use to identify and select qualified beneficiaries. But will instead base your decisions on a case-by-case basis with the goal of assisting individuals who are unemployed, victims of abuse, homeless or underprivileged. The pastor explained further that B is free to make his own determination as to who is eligible to receive assistance. You state that any beneficiaries will not be related to B or B's family.

You did not provide any financial information with your application, stating that there have been no transactions to date. You state that you expect donations from three sources, B, B's personal contacts, and your website. You explained that the large loan from officers reported in your financial statements was actually a donation from B that you used to pay your expenses. You state that you are waiting until you are recognized as an exempt organization to solicit donations from sources other than B.

Two of your directors are related and all of your directors have a business relationship other than through their position as your director. You did not provide additional information about those business relationships or a copy of your bylaws.

Law:

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual.

Section 1.501(a)-1(a)(2) of the Income Tax Regulations ("regulations") states that an organization is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form with the Internal Revenue Service.

Section 1.501(a)-1(a)(3) of the regulations states that an organization claiming exemption under section 501(a) and described in any paragraph of section 501(c) (other than section 501(c)(1)) shall file the form of application prescribed by the Commissioner and shall include thereon such information as required by such form and the instructions issued thereto.

Section 1.501(c)(3)-1(a) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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 that accomplish one or more of such exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically 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.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the word “charitable” as including relief of the poor and distressed or of the underprivileged.

In New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), the organization failed to establish an administrative record that showed it was operated for exclusively exempt purposes. The court found instead that it was part of a tax avoidance scheme and primarily provided private benefits.

In Church in Boston v. Commissioner, 71 T.C. 102, 1978 U.S., an organization made grants to various individuals, including officers of the church. The grants carried no legal obligation to repay any interest or principal. Although the church contended that the grants were made to assist the poor who were in need of food, clothing, shelter, and medical attention, the church failed to provide any documented criteria demonstrating the selection process of recipients and the reasons for the specific amounts given. The court affirmed the determination that the church failed to establish that its grant program constituted an activity in furtherance of an exempt purpose.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), an organization was organized to provide education and charity, but failed to provide sufficient details regarding its proposed operations. The court held that it failed to prove that it would operate exclusively for exempt purposes under section 501(c)(3) of the Code.

Section 3.08 of Rev. Proc. 2009-9, 2009-2 C. B. 259 provides that an organization seeking recognition of exemption under section 501(c)(3) must submit a completed Form 1023. A substantially completed application, including a letter application, is one that includes a detailed narrative statement of proposed activities and a narrative description of contemplated expenditures.

Section 4.03 of Rev. Proc. 2009-9, 2009-2 C. B. 260 provides that exempt status may be recognized in advance of an organization’s operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed. An organization must fully describe all of 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. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

Analysis:

The information you submitted is insufficient for us to conclude that you are organized and operated exclusively for charitable purposes as specified in section 501(c)(3) of the Code. To be exempt, an organization must provide a substantially complete application. In addition, an exempt organization must show that it is both organized and operated exclusively for one of more of the purposes described in section 501(c)(3) of the Code. Section 1.501(c)(3)-1(a) of the regulations.

Exemption from federal income tax is not a right; it is a strictly interpreted matter of legislative grace and the burden rests with the applicant to prove that it is entitled to exempt status. New Dynamics Foundation, *supra*. Your application did not include information required by the form and its instructions such as copies of your bylaws nor did you provide information about your directors, your activities, and the criteria you use to select beneficiaries. Your application does not satisfy the requirements of sections 1.501(a)-1(a)(2) and (3) of the regulations and Rev. Proc. 2009-9, 2009-2 C. B. 259 and 260.

An organization must also satisfy the organizational and operational test described in the regulations to qualify for recognition as an organization exempt from federal taxation. An applicant must establish an administrative record showing that it operates primarily to accomplish an exempt purpose(s) described in section 501(c)(3) of the Code. While your Articles of Incorporation provide that you are organized for charitable purposes, you have not provided enough information to demonstrate that you operate exclusively for charitable purposes.

You stated that you are not presently operational and do not intend to commence operations until you are recognized as an exempt organization. The Service may recognize exempt status in advance of operations if an applicant describes its proposed operations in sufficient detail to permit a conclusion that it will clearly meet the requirements for exemption in accordance with section 501(c)(3) of the Code. However, a mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. La Verdad v. Commissioner, *supra*.

Based on the information you provided, you have failed to establish that your operations will be charitable through relief of the poor and distressed. The regulations define the word "charitable" as including relief of the poor and distressed or of the underprivileged. Section 1.501(c)(3)-1(d)(2) of the regulations. Similar to the church described in Church in Boston v. Commissioner, *supra* you state that you help families in need, but you did not provide information about any criteria that you would use to select qualifying recipients. You provided a couple of examples of your grants and services, but failed to provide information providing qualification criteria or selection process. Instead, you state that rely on referrals from the pastor of M who uses personal knowledge in deciding whether someone qualifies for assistance. You have not demonstrated that your grants were made in an objective and nondiscriminatory manner and that the distribution of such grants was made in furtherance of an exempt purpose.

An applicant for exemption must also prove 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. Section

1.501(c)(3)-1(d)(1)(ii) of the regulations Two of your three directors are related and all three of your directors are members of the church and have a business relationship other than through their position as your director. Even though you do not presently pay compensation to your directors, you have not stated that they will not receive compensation in the future. Even if your directors do not receive compensation, the family members exercise control over you and can use your assets to benefit the family. Since you have not provided a copy of your bylaws or any other governing documents prohibiting such private benefit, we find that you do not meet the requirement in section 1.501(c)(3)-1(d)(1)(ii) of the regulations providing that you do not operate to benefit private interests.

Conclusion:

An organization that fails to provide a substantially completed application and meet the organizational and operational tests described in the regulations is not exempt. You have not provided sufficient evidence to demonstrate that you are organized and operated for exempt purposes within the meaning of section 501(c)(3) of the Code. You have failed to establish that your program constitutes an activity that furthers a charitable purpose by actually providing relief to persons who are poor and distressed or underprivileged. You have not established that you will operate for charitable purposes or that no part of your net earnings will inure to the benefit of private individuals. Accordingly, you do not qualify for exemption under section 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.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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 protest 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 this address:

You may also 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

