



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201030035**

Release Date: 7/30/2010

Date: May 7, 2010

UIL: 501.03-05; 501.05-01; 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.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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

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: March 12, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = Officer
F = For-profit Comp
O = Promoter
u = Date
v = Date
x = Date
y = State
z = State

UIL Nos:

501.03-05
501.05-01
501.33-00

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.

Issues

- 1) Are private, rather than public, interests being served, therefore prohibiting you from qualifying for exemption under section 501(c)(3) of the IRC?
- 2) Are you operating exclusively for exempt purposes as described in Section 501(c)(3) of the IRC?

Facts

You were incorporated on date x in State y and operate in State z. You do not have Bylaws.

In describing the history of your formation you state your founder, B, was contacted by O, a for profit grant writing corporation. You explained that O assisted B in three different types of grants. One was for you, the non profit corporation, the second was for B's for-profit corporation, F, and the third was an E-1 land grant. All copies of contracts with O list B as the client. You state that B has paid approximately \$ _____ in fees to O to write the grants, submit the application Form 1023 to the IRS and then send letters to various corporations to facilitate donations. You explain another \$ _____ will be paid to O if funding is secured.

You state you formed the nonprofit corporation when you became aware you would not be able to receive donations from larger corporations without becoming a nonprofit. You state according to O approximately 400 corporations will be contacted, with requests for grants totaling up to \$ _____

Company O contacted the owner of company F and proposed individual B pursue grants. On date u Individual B signed a contract and paid Company O \$ _____ to get grants for F. After significant research by individual B, individual B became aware that donations from corporations are no larger than \$ _____ without becoming a non-profit organization with a tax exempt status. Then on date v individual B signed a contract and paid Company O an additional \$ _____ to write grants, and file for section 501(c)(3) with the I.R.S.

Your purpose and proposed operations are comparable to B's for profit business, F. Both you and F include B's surname in your business name. Both you and F have as the primary activities chiropractic services. B is a chiropractor and sole owner of F, a chiropractic clinic. B is your founder and currently serves as your president and secretary. You too will operate a chiropractic clinic. In fact the operations of the two entities, you and F, are so similar your responses to additional information requests describe the clinic as "our clinic" and you state your "purpose if funded is to expand the indigent care part of our clinic which we are struggling to do so because of the current state of the financial problems due to our economy as well as the lack of health care coverage."

In a letter explaining your program, you state "

"

You state you will "

"

Your narrative statement provides that you were formed for the purpose of providing complete chiropractic charitable care and wellness education to people in nursing homes, drug rehab

centers, homeless shelters and indigent individuals who otherwise would not be able to financially afford such services.

You state, " " You further state " "

Your letter written for potential donors was under the letterhead of individual B. The letter requests funds for individual B " " The letter refers to individual B as the " " and states that he is " "

You provide a Project Outline, Statement of Needs, that lists what you will do if you receive the grant money. It includes hiring 6 new employees, moving from your current location to a larger space and buying additional equipment such as ultrasound machines, traction units, tables, digital e-ray unit, etc.

You provide a " ". The letterhead for the budget is for the for-profit business F. The bulk of the expenses are salaries, payroll and rent. Other than utilities, the expenses include the following:

- X-Ray supply
- Insurance forms
- Stamps
- Workers Comp. Ins.
- Office liability Insurance
- Malpractice insurance
- Business licenses
- Property tax

Further, you state after you are up and running, individual B will receive a graduated salary "based on the amount of responsibility and patients" treated. You state that as you grow, the for-profit F and you will be two separate entities. The fees for each will be based on the state workers compensation fee structure. The fees are at cost.

You state F has approximately 25 to 30 patients who will be transferred to you for their medication needs. You will assign staff to contact all patients who have received indigent care in the past and qualify them to receive care from you. You further state no monies or patients have been received or seen since incorporating.

You initially represent you will operate at F's facility, then at F's facility on alternate days, and in your most recent response at a separate location.

"[Y]Our plan is to have 5 different treatment options available for your patients.

- A. Holistic Medical Doctor
- B. Chiropractor
- C. Licensed Physical Therapist
- D. Massage Therapist
- E. Acupuncturists
- F. Nutritionist/Wellness counselor and Psychotherapist will be available upon need

[Y]Our staff will consist of 3 front desk girls, one will do the initial scheduling, one will do exiting scheduling and one will assist in the billing department. We[you] will have 2 billers: one will be primary and responsible for qualification of patient's financial needs, verifying insurance, if any, setting up payment plans if needed...The financial department will be the responsibility of the primary billing department, they will handle all primary insurance billing, entering daily charges. The secondary billing department will handle all record keeping entering all payments, appealing rejected claims, patient statements, establishing indigent care, helping patients in all aspects of their care. The officer manager [B] will handle all interactions between state organizations, present financial hardship cases at staff meeting and coordination patients with attorney, state agencies and foundation funds.

You describe your evaluation process as:

Patients and/or guarantors will be evaluated for charity care approval prior to services being rendered, at the time of service, or as soon as practical after service has been provided to the patient.

Patients will be screened for third-party payment sources. Medicaid benefits, and/or Medicare benefits. Failure to apply for such resources may result in denial of the charity application....

You will allow a patient and/or guarantor to apply for charity care at any point from pre-services to final payment of bill so long as the account has not been forwarded to a collection agency.

Finally you state there will be referrals between F and you.

LAW

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection, 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.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Rev. Rul. 69-266, 1969-1 C.B. 151 ruled that an organization formed and controlled by a doctor of medicine who was "hired" to conduct research programs consisting of examining and treating patients who were charged the prevailing fees for services rendered did not qualify for exemption.

Under Section 4.03 of Rev. Proc. 2010-9, 2010-2 I.R.B., exempt status will be recognized in advance of the commencement of operations if the proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. In order to satisfy this criteria, the organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), 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.

In est of Hawaii v. Commissioner, 71 T.C. 1067 (1979), a nonprofit organization paid a for-profit corporation for the licenses to conduct "est" programs. The est programs involved training, seminars, and lectures in the areas of intrapersonal awareness and communication. The court held that denial of exemption was proper because the organization had a substantial commercial purpose that served private rather than public interests. Although the nonprofit claimed that it had no connection, direct or indirect with the for-profit, the court found that the for-profit exerted considerable control over the nonprofit's activities. The nonprofit's only function was to present to the public for a fee, ideas that were owned by the for-profit with materials and trainers supplied by the for-profit. Regardless of whether the payments made by the nonprofit to the for-profit were excessive, the for-profit benefited substantially from the operation of the nonprofit. The nonprofit was the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of the for-profit.

New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes.

In KJ's Fund Raisers, Inc. v. Commissioner, 74 T.C.M. 669 (1997), the court held that a nonprofit organization, which sold lottery tickets on the premises of a for-profit business had a substantial non-exempt purpose to enhance the profits of the for-profit business. The owners of the for-profit business formed the nonprofit organization purportedly to raise funds for distribution to charitable causes. The nonprofit's lottery tickets were sold during the regular business hours by the owners and employees of the for-profit business. The owners of the for-profit initially controlled the board and later indicated that it would vest control in unrelated parties. The nonprofit opined that the

organization "would fold without the original founders of the organization as officers." In finding that the nonprofit had a substantial nonexempt purpose, the court reasoned that the owners of the for-profit were in a position to control the nonprofit. Additionally, the court found that the publicity received by the for-profit was a significant benefit.

APPLICATION OF LAW

You are not as described in section 501(c)(3) because you are not organized and operated exclusively for charitable, educational or religious purposes. Further, your earning inure to the benefit of B.

You are not as described in section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations because you are not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code. Your purposes further the interests of your creator B, who also serves as your president and treasurer.

You do not meet the requirements of Rev. Proc. 2010-9, *supra*, because you have not provided sufficient detail to permit a conclusion that you will meet the requirements for exemption under IRS section 501(c)(3).

You are similar to an organization described in Rev. Rul. 69-266, *supra*. You are created and controlled by B, who will be hired to perform chiropractic services that are similar to those offered at his own private practice, F. You state that the for-profit F can no longer afford to absorb the losses of individuals that cannot pay for their services. You state that patients, who cannot pay the for-profit F, will be transferred to you, and that there will be referrals between F and you. In other words, you were formed as an extension of his business.

You are similar to Better Business Bureau, *supra*, because like it you too were formed for a nonexempt purpose. Namely, you were formed to secure grants which are available only to nonprofit corporations. The facts above show the grants were to be used to hire staff, acquire a larger facility, purchase medical equipment and provide chiropractic services. While you propose to provide some educational programs, these programs have been performed under the name of for-profit F for 15 years. Your primary activity, based upon your activity description and your budget, is the provision of chiropractic services to individuals that cannot pay for them through the for-profit F. Any educational and charitable activities that you may have are incidental to the furtherance of the private interests of individual B.

As stated in New Dynamics, *supra*, you have failed to establish that your operations will further a charitable purpose and that you will not be operated for a substantial nonexempt private purpose. While you exist as a separate legal entity from for-profit organization F, you are clearly controlled by individual B, who owns for-profit F. Your activities are identical to for-profit organization F's activities. You refer to "we" throughout your application whereby you mingle the activities of the for-profit F with yours. For example, you state that "we" have been providing community education for 15 years. On the other hand, you state that you will not conduct any activities until you receive grants.

While you have two other officers, control appears to rest with B, as he serves as both president

and secretary. There are no bylaws to indicate how your operations will be conducted. Moreover, est of Hawaii and KJ's Fund Raisers, Inc. held that the nonprofit's activities served the commercial purposes of the for-profit organizations that formed them, even where individuals unrelated to the for-profit organizations formally controlled the nonprofit. Like those cases, your operations will provide impermissible promotion of and business for the for-profit business of your founder.

CONCLUSION

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(3) of the IRC as outlined below.

- 1) Private, rather than public, interests are being served, therefore prohibiting you from qualifying for exemption under section 501(c)(3) of the IRC. Specifically, the private interests of individual B are being served through your activities.
- 2) You have failed to establish that you further an exclusively charitable purpose and that you will not be operated for a substantial nonexempt private purpose. The activities of B's business F and you are so intertwined that it is difficult to distinguish the two entities in a meaningful way.

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*.

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, Group 7830
Room 4-504
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations, Group 7830
550 Main Street, Room 4-504
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:

Publication 892