



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201150035**  
Release Date: 12/16/2011

Date: 9/23/2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.36-01; 501.32-00; 501.33-00

Dear :

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

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G Lerner  
Director, Exempt Organizations

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: 7/13/2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

W = Name of City  
X = Name of State  
Y = Name of Councill  
Z = Name of Event  
D = Name of website  
v = Date

**UIL:**

501.36-01  
501.32-00  
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**

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

**Facts**

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

You were formed as a corporation by Articles of incorporation filed on v, in State X. The impetus for your formation was a highly successful fundraising event held in conjunction with Y held at a local museum. All the for-profit restaurants in your group along with some others set up workstations to demonstrate the fine dining culinary trade. The event offered food demonstrations and free tastings. Following the success of this event you decided to form your own non-profit group.

Your purposes as stated in your Articles of Incorporation are to promote fine dining experiences to the general public through free public demonstrations and educational opportunities for chefs.

Your activities consist of providing low cost opportunities for the W community to participate in fine dining experiences. You state that fine dining is an art form and you will focus on the promotion and advancement of the art of fine dining and educate members of the community on this craft. You originally stated that you also plan to present workshops, forums, demonstrations and public tastings open to the general public at an undetermined cost which will be fair and reasonable. A second application and activity narrative submitted simply stated that you plan to participate in several annual local events that showcase the city's cultural diversity and provide opportunities for education and experience in the various fields of fine art. Funds raised from these events provide support for community arts programs and charitable organizations. The funding for your activities will come from organizing and executing fund raising projects where tickets will be sold for nominal cost.

You plan to join with the Y to hold fundraising events. Tickets will be sold by both you and Y at a cost both reasonable and related to the cost of the service provided and the net proceeds will be divided between both groups.

Your goal is to introduce those living in W to taste the difference between fast food and fine dining, in hopes that they will prefer fine dining. In addition you want to introduce individuals in the community to flavors and cuisines of the world at a cost within their means and in so doing you hope to further the goal of the W, which is focusing on the success of its downtown arts scene by creating affordable opportunities for fine dining so that residents and visitors to the city can better appreciate what the city in general has to offer. You state that the influx of tourists and non-locals will contribute to and aid all local vendors in the area who will see a significant increase in patronage.

Your activities take place at any of seven restaurants that make up your organization. You are formed by combining the efforts of seven fine dining restaurants centered in the local community, the W. Two of the four individuals that currently comprise your board of directors are shareholders in two of the seven for-profit fine dining restaurants that have combined its talents to conduct the activities of your organization. An additional stated goal is to progressively add restaurants to your group. You have been currently

working under the umbrella of the Y, but the Y has requested that you obtain your own exemption.

Your activities center around offering the fine dining experience to the general public and you intend to teach your patrons that fine dining is an art form. First, you provide that your activities will involve professional chefs demonstrating their individual styles of preparing and presenting food, presenting tutorials about local and international ingredients, and offering hands-on participation by attendees. These easily accessible fine dining opportunities and public tastings are designed to exemplify the fine dining industry. This will tentatively be scheduled once a month conducted at one of your sponsoring restaurants. While you state in your Articles of Incorporation that these activities will be conducted for free, you later state that an admission and participation fee would be charged, but these fees will be reasonable and related to the cost of the service to be provided.

Secondly, you state you will offer easily accessible fine dining opportunities and public tastings in conjunction with various local non-profit organizations in support of their community fundraising efforts. This will include organizing tables and booths at these events to demonstrate the art of fine cuisine. This will be done at least six times in a calendar year, and you will volunteer and donate all goods and services to these events. Any admission fee will be set by the non-profit organization sponsoring the fund-raising function and the non-profit is not expected to compensate you for this service. However, while conducting a similar activity, in conjunction with the Z, you will set, charge and collect the entrance fee for this function. This is a once a year activity. You state any proceeds received from this activity would be used to support you and go towards providing culinary scholarships to aspiring chefs.

You have a website, D, that advertises for you and contains links to the restaurants that comprise your organization. You state you wish to use your website to expose members of your community to fine dining which is affordably priced. Your website currently achieves this goal by promoting and advertising low-cost (or fixed price) menus at the restaurants that formed your organization. Your home page advertises "Restaurant Week has Arrived"! It goes on to explain a passport promotion where patrons of all seven restaurants receive an invitation to an exclusive event and are entered into a drawing for a dinner. Other web pages include links to your sponsoring restaurants as well as the location, hours of operation and menus of these restaurants.

While the website at this time markets the individual for profit restaurants, you state that once tax exempt status is granted, the web site will be restructured to advertise the educational activities that will soon follow such as the workshops and public tastings etc which are currently conducted under the umbrella of Y.

Your income comes from sale of tickets to your events. The financial data provided

shows that after expenses of the event you distribute approximately 7% of your total income to charities.

## Law

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from Federal income tax organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Regulations states that the words "private shareholder or individual" mean an individual having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states 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 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, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the Regulations provides that the term "educational", as used in section 501(c)(3), relates to –

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Revenue Ruling 76-244, 1976-1 CB 155, an organization that provided home delivery of meals to the elderly and disabled for a fee or reduced fee depending on the recipient's ability to pay is operating for exclusively charitable purposes and qualifies for exemption under section 501(c)(3). By preparing and delivering meals in this manner, the organization is providing relief to the distressed recipients of the meals and is therefore accomplishing a charitable objective.

Revenue Ruling 66-179, 1966-1 CB 139, describes how the methods and operation of a "garden club" would determine if an organization would qualify for section 501(c)(3). The activities of the organization exempt under 501(c)(3) include educating the public through lecture programs to improve the participants ability in horticulture and holding public flower shows of a non-commercial nature. Membership to the 501(c)(3) organization is open to the public and consists primarily of amateur gardeners and others not professionally or commercially connected with horticulture.

Revenue Ruling 76-152, 1976-1 CB 151, A nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code; Rev. Rul. 71-395 clarified.

In Arlie Foundation, Inc. v. U.S., 283F. Supp. 2d 58 (D. D.C., 2003), the organization operated a conference facility made available primarily to exempt organizations and governmental units. It was found that even though the organization argued that serving non-profit and governmental clients is indicative of an exempt purpose, the organization was found not to be exempt under section 501(c)(3). This was because it was found to be operating in a manner not significantly distinguishable from a commercial endeavor, and thus furthering a substantial non-exempt purpose. The court also found that the organization's patrons were not limited to exempt entities, or a charitable class.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7<sup>th</sup> Cir. 1991), the Court of Appeals upheld a Tax Court decision, CCH T.C. Memo, 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of a related charitable and religious organization does not qualify under section 501(c)(3). The decision affirmed that the religious organization operated its restaurants and health food stores for a substantial commercial purpose.

Leon A. Beeghly v. Commissioner, 35 T.C. 490 (1960) provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In KJ's Fund Raisers, Inc. v. Commissioner, TC Memo 1997-424 (1997), the tax court found that while the proceeds received by a gaming organization was raised for charitable purposes, it was also operated for the substantial benefit of private interests. It was found that members of the board, also the owners of a related for-profit establishment, had substantial control over the organization seeking exemption and were free to set their own policies. The Court found that the organization had served the private interests of its directors in maintaining and augmenting their business interests.

In the Church of the Living Tree v. Commissioner, TC Memo 1996-291 (1996), the Tax Court upheld the Service's determination that the organization, whose secondary purpose was the promotion of a for-profit industry, was not described in IRC 501(c)(3). The Service had determined that promotion of this industry was a substantial nonexempt purpose and that the organization provided benefit to the founder.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (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 of importance of truly exempt purposes. The court ruled that the activities engaged in by the organization were in part aimed at promoting the prosperity and standing of the business community served a substantial private purpose.

Harding Hospital, Inc., v. United States, 505 F2d 1068 (1974) holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

### **Application of Law**

You are not described in Section 501(c)(3) of the Code because you fail the operational test for exemption. Your operations are commercial in nature and also benefit the interests of your directors and the for-profit restaurants that make up your group.

Additionally, you do not meet the requirements of section 1.501(c)(3)-1(d)(1)(ii) since you operate for the private interests of your directors and the for-profit restaurants located in downtown W that form your group.

You also do not satisfy the requirements of section 1.501(c)(3)-1(d)(3)(i) of the Regulations. Your website markets the restaurants. You state that your educational activities will only begin after you receive exemption. You have not sufficiently documented how your activities fall under the definition of the term "educational" as listed in the Income Tax Regulations. You state you will conduct food and wine tastings and demonstrations, but no further documentation as to how this activity improves or develops the participant's capabilities, or how these activities are useful to the individual and beneficial to the community.

Unlike the organization in Revenue Ruling 76-244 you do not provide meals specifically to the elderly. Your focus is on marketing your restaurants and providing your services to all members of the general public.

You are not like the organization that qualified for 501(c)(3) in the Revenue Ruling 66-179. Your purposes and activities are aimed at promoting the member restaurants. Your activities are commercial in nature and there is little or no educational component to them.



You are similar to the organization in Revenue Ruling 76-152 in that you are selecting, exhibiting and promoting your member restaurants and funds raised are used in part to subsidize your cost of operations.

Like the organization in Arlie Foundation and Living Faith cases you operate primarily for the commercial purpose of promoting your member restaurants. Your website promotes your restaurant members, provides their menus and prices and does not indicate any exempt activity.

As in Leon A. Beeghly you operate for the private interests of your member restaurants. You conduct public tastings and other events the purpose of which is to bring more clients to the member restaurants and thereby increase their sales. Also your restaurants have a substantial, controlling interest in you, as members of your board are shareholders in those restaurants.

You are like the organization in KJ's Fund Raisers, although you conduct fundraising activities for other non-profit organizations in association with Y the activities serve the private interest of the member restaurants that provide this service.

As in the case of Church of the Living Tree and Better Business Bureau, your substantial non-exempt purpose is the promotion of your for-profit members of the fine dining industry in W.

You indicate that you have not commenced any educational activity and that your website will be changed to indicate the educational component once exemption is granted to you. As in the Harding Hospital case, you have not shown that you satisfy the requirements to be exempt under section 501(c)(3).

### **Applicant's Position**

You stated that you are currently operating toward a charitable purpose whereby you provide services that are beneficial to the common public interest. You currently offer fine dining experiences to the general public, including those in lower income brackets at prices that are affordable to those individuals who desire to participate in and experience the art of fine dining. Your focus centers around goals of a general philanthropic nature; to make available fine dining experience to every member of the community, for the general well being of those individuals and to weave it into the fabric of the daily community and therefore your group will operate for charitable purpose. The individual restaurants will operate for profit and your ultimate goal is to progressively add additional restaurants to your group.

You state that while your website at this time markets the individual for-profit restaurants that comprise your group, once tax exempt status is granted the website will be restructured to advertise your educational activities such as demonstrations, workshops and public tastings. You maintain that your educational and charitable intentions shall be achieved not just by training, workshops and demonstrations but also by exposing the members of the community to fine dining which is affordably priced.

You also state that you will raise money for other non-profit groups. These unrelated non-profits will set, charge and collect entrance fees for their events. You will donate chefs, time and food preparation for these events. You will set up booths that will be set up to showcase fine dining and your chefs will display their culinary skills and may even offer hands-on experiences to the attendees.

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

Your purpose is to promote your member restaurants and therefore is not an exempt purpose within the meaning of section 501(c)(3) of the Code. In addition the offering of fine dining experiences to the general public is not an exempt purpose under section 501(c)(3) of the Code. Your only current activity is to promote the individual for-profit restaurants that comprise your group. Any charitable or educational activities are to commence only after you receive exemption. The burden of proof is upon you to show that you will be operating in an exclusively exempt manner prior to receiving exemption. Your activities are substantially commercial in nature and provide private benefit to the restaurants in your group. In addition since several of your board members are shareholders in the restaurants in your group your earnings inure to the benefit of your board members. While your activities involve raising funds for other non-profits you are also operated for the benefit of private interests which is a substantial non-exempt purpose.

### **Conclusion**

.Based on the above facts and law , we conclude that you do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code. Specifically you fail the operational test since you are operated in a commercial manner, for the benefit of private interests and your earnings inure to your board of directors.

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](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,

Lois G Lerner  
Director, Exempt Organizations

Enclosure, Publication 892