



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201204019**
Release Date: 1/27/2012

Date: November 4, 2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.00-00; 501.03-05; 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 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: September 9, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Board Member
C = Board Member and Wife of B
D = Name of Business
E = Name of Company
F = Name of Company
N = Name of Organization
U = Date of Incorporation
Y = State
Z = State
x = \$
y = \$
z = \$

UIL:

501.00-00
501.03-05
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

1. Do your earnings inure to B and C through D? Yes, for reasons given below.
2. Do you have a substantial non-exempt purpose which will preclude exemption under 501(c)(3) of the Code? Yes, for the reasons described below.
3. Are private interests being served prohibiting you from qualification under Section 501(c)(3) of the Code? Yes, for the reasons stated below.

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

4. Do you fail to meet the organizational test? Yes, for the reason described below.

Facts

Prior to your formation, B, your President, was solicited by E, a for-profit company, through an email advertisement stating his for-profit company, D, was eligible for a corporate grant because D is part owned by B's wife, C, and because D already employed a handicapped individual and had plans to hire more. B, began the process to obtain the grant money by paying \$x to E to produce a business plan. Subsequently B was told by E that D was eligible to receive a grant in the amount of \$z to be paid all at once, with "no strings attached." However, "Supplemental Documents" would need to be produced by an affiliate for-profit company called F. B was told all of these documents were a requirement of the Internal Revenue Service.

B, paid \$y to F for a document that was never received. Repeated requests for the document were met with confirmations that his document would be provided, but F never sent it to B. E told B that the initial grant would come once the Internal Revenue Service signed off on the document. Later E informed B that the grant would be doubled and would be guaranteed for two years. However In order to receive the funds a non-profit corporation had to be formed which would distribute at least 5% of the grant money to "good causes". The remaining 95% of the funding would go to finance D. The grant would be withdrawn if he did not agree to form the non-profit. B paid \$y to have F complete the Form 1023 application.

You were incorporated under the laws of the state of Y on U. F incorporated you in Y although D operates in Z. Your Articles of Incorporation state that your purpose is a nonprofit public benefit entity that is not organized for the private gain of any person. Your board of directors will be comprised of all related individuals. B, is founder and owner of D, a retail and wholesale nursery business.

You have not conducted any activities, and you did not understand how all of this was going to work. You formed the nonprofit in order to receive funds to support D, which took a hit when the economy failed. If you received your grant, you hoped to establish three scholarships at a local high school where B and C's four children attended. One scholarship would be in horticulture, another one would be in music (B's background is in music) and one for financial hardship. In addition, you were going to make donations to a local organization, N, that shelters battered women and their children. Had you received the promised grants you would have found other good causes and you intended to donate more than the 5% that F wanted you to donate. F had told you that you could use some of the money to set up educational accounts for B and C's grandchildren. B was going to do further research into that matter.

Law

Section 501(c)(3) of the Code describes in part an organization that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Federal 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)(2) of the Regulations provides an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

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

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 the exemption regardless of the number or importance of truly exempt purposes.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), The Tax Court found that a gaming organization was not exempt. While the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization's founders were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While at KJ's Place, the lottery ticket purchasers were sold beverages. The initial directors were the two founders were no longer on the board. At all times these two individuals were the organization's officers. Salaries had been paid to them and rent had been paid to KJ's Place. The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view: "Although those practices ceased and are not in issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid."

Application of Law

You are not as described in Section 501(c)(3) of the Code because your activities consist of obtaining non-profit grants to enhance the growth and productivity of D while using an insubstantial amount (5%) of funding for charitable purposes. You are serving the private interests of B and C the owners of D. Your activities result in inurement of earnings to B and C.

You are not organized and operated for exclusively one or more of the purposes specified in Section 1.501(c)(3)-1(a)1 of the federal tax regulations because your purpose is to obtain funding for D the for-profit business owned by B and C. In addition your articles of incorporation do not contain the necessary 501(c)(3) language and therefore you also fail the organizational

test for exemption.

You are not operated exclusively for one more exempt purposes described in Section 1.501(c)(3)-1(c)(2) of the regulations because your earnings inure to the benefit of B through the provision of non-profit grant funding to D.

Your activities further the private interests of B and C through the provision of non-profit grant money to B's wholly owned for-profit, D. Specifically, D will be the recipient of 95% of non-profit grant funds intended for you while only 5% of the grant funding received by you will be used for charitable purposes. Based upon this plan, you are not operated for exclusively 501(c)(3) purposes as described in Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations.

You are operated in a manner consistent with the facts described in the court case, Better Business Bureau v. United States. Specifically, your intention to use monies for the benefit of D, B and C constitutes a substantial non-exempt purpose that would preclude exemption under Section 501(c)(3) of the Code.

You are similar to the organization described in KJ's Fund Raisers, Inc v Commissioner. Specifically, you were formed to operate for the substantial benefit of B and C through the provision of non-profit grant monies to D, B's for-profit business. This situation precludes exemption under Section 501(c)(3) of the Code.

Applicant's Position

You stated that F was to guide you through this but they have been uncooperative and you do not have much confidence in that happening. You stated that when the time comes, which is unlikely now since you won't be getting the alleged grant, you will consult with your business accountant.

Service Response to Applicant's Position

The main purpose of the grant, if received, is to provide funding for D a for-profit business. As noted above this is not an exempt purpose.

Conclusion

Based on the above facts and law we find four reasons to deny exemption, any one of which standing alone is sufficient.

1. The exclusive purpose for which you were formed was to obtain grants for your for-profit business D which is owned by B. Only an insubstantial amount of the grants you receive would be used for exempt purposes. Your earnings therefore inure to B and C through D which precludes exemption under Section 501(c)(3) of the Code.
2. Because you were formed to receive grant money and use it to further the operations of your related for-profit organization, D, this serves a substantial non-exempt purpose. Therefore, you do not qualify for exemption from federal income tax under section 501(c)(3)

of the Internal Revenue Code.

3. Because you were formed to raise funds through grants to benefit D which is owned by B, you were formed to benefit private interests which precludes exemption under 501(c)(3) of the Code.
4. Your articles of incorporation do not have the necessary purpose and dissolution clauses. Therefore you also fail the organizational test for exemption under section 501(c)(3) of the 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 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 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 Lerner
Director, Exempt Organizations

Enclosure, Publication 892