

Internal Revenue Service
TEGE Appeals Programs
300 N. Los Angeles Street
Los Angeles, CA 90012

Department of the Treasury
CERTIFIED

Date: **MAR 8 2012**

Number: **201222069**
Release Date: 6/1/2012

Taxpayer Identification Number:

Person to Contact:

A

Employee ID Number:

B

Tel:

Fax:

Refer Reply to:

In Re:

Tax Years:

UIL Index:

501.03-03

Dear :

This is a final adverse determination as to your application for exempt status under section 501(a) of the Internal Revenue Code as an organization described under section 501(c)(3) Our adverse determination was made for the following reason(s):

You are not operated exclusively for an exempt purpose enumerated in section 501(c)(3) of the Code. You have failed to establish that you are operated exclusively for an exempt purpose.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed before the 91st (ninety-first) day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions

for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

You also have the right to contact the Office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers. You can call 1-877-777-4778, and ask for Taxpayer Advocate assistance.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals procedures, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

We will notify the appropriate State officials of this final adverse determination of your exempt status, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Karen A. Skinder
Appeals Team Manager

cc:



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: May 3, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

B= date

C= state

D= date

E= individual

F= individual

G= individual

H= organization

J= country

K= individual

L= individual

M= individual

N= date

P= date

UIL Nos: 501.33-00

501.03-00

501.03-15

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

- 1) Do you qualify for exempt status under IRC 501(c)(3)? No, for the reasons given below.
- 2) Does your inability to adequately establish operations as exclusively charitable preclude exemption under IRC 501(c)(3)? Yes, for the reasons given below.

Facts

You were formed as a corporation on date B in the state of C. Form 1023 requesting exemption under 501(c)(3) was filed on date D, three years after your formation. Your officers are E, F and G.

Your Articles of Incorporation are compliant with 501(c)(3) purposes and along with your bylaws state you were formed to financially support a kollel (school), H, located in J, a foreign country. Your name is Friends of H.

Your only given activity is supporting H; which you describe as an academic institution based in J. The work of H is done under the direction of K, a noted scholar and author of many religious themes. You stated that you were formed after members of your board were inspired by seeing the actual activities of H and wanting to support its function.

On Form 1023, in describing grant making procedures, you indicate you will make pre-grant inquiries about any potential foreign recipient(s) and use follow-up procedures to ensure distributions were used in furtherance of your purposes. Applications would be required to be submitted by any potential recipient(s) of your funds indicating the purpose and use to be made of those funds. Foreign organizations would accept contributions made to your organization earmarked for a specific country or organization. Also, contributors of funds to your organization would know you had ultimate authority to use those funds at your discretion.

You first stated that you gained familiarity with H by visitation in J and through correspondence. That later changed to phone calls, and a representative from H visiting the United States. No supporting materials or documentation could be provided to substantiate those visits aside from the dates visitation occurred. You were unable to locate any written documentation or communication with H which you'd previously received or substantiate any pre-grant inquiries were made.

You received no written reports from H despite stating periodic follow up would take place. Your grant selection process was reliant on familiarity with the recipient entity rather than documented policies and procedures on how or why you were awarding funds.

On date N, you provided a copy of your grant application and agreement that would be used for potential and actual recipients of all future distributions. Up to this date no applications for funds were ever submitted despite your indication that "applications will be required to be submitted indicating the purpose and use to be made of the grants and periodic follow up will take place to see that this has occurred." You were unable to provide evidence any grants made after this date were made under the new agreement.

You stated that you would advise beneficiaries and donors of funds to your organization on the use of funds. You have provided no documentation demonstrating how contributors of funds to your organization would know you had ultimate authority over those funds.

You indicated a close connection with H and applied as a supporting organization to them on Schedule E, Form 1023. On that Schedule you indicate that you or H would not earmark funds for support of a particular program or activity, directly conflicting with information given on another part of Form 1023.

Your bylaws require you to have a board meeting at least twice per year at which proper recordings of proceedings would be kept by your Secretary. Despite the provisions in your bylaws for these meetings, to date, none have been held. When asked for records of your meetings,

including copies of minutes, you indicated there were none. Your bylaws, and minutes submitted with your application, are the only documentation from meetings that exist.

You solicit donations in the United States to promote the work of H. Solicitations are made by volunteers either in person or by telephone. The only expenses incurred by you are any governmental tax and related filing fees. All funds collected in the United States, minus those expenses, are sent directly to H. K is in receipt of all funds sent to H and H is the only foreign organization to obtain contributions from you since your inception. Your financial data show total support given to H exceeds \$275,000 to date.

You provided copies of cancelled checks that were signed by L and M, who are not board members, with an unknown address printed on the checks. When asked why they were signing checks on your behalf you stated that L and M, who reside in the United States and support your purposes, were asked to be signatories because they have a good relationship with the bank at which you have your account. They could not sign checks without consultation with your board. On date P you stated that only members of the governing body would sign checks on your behalf from that point forward. However, you submitted canceled checks written after that statement that were signed by L.

When asked further about the unknown address printed on your checks, you stated that L and his family have been in the real estate business for many decades, and since they operate an office, they were kind enough to let you utilize that office as your address since you had no other office and wished to keep expenses at a minimum. While E, F and G each have listed mailing addresses in the state of C none are in receipt of day to day correspondence addressed to your organization.

Law

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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.

Revenue Ruling 66-79 held that contributions to a domestic charity described in section 170(c)(2) of the Code which are solicited for a specific project of a foreign charitable organization are deductible where the domestic charity has reviewed and approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions.

Revenue Ruling 68-489 held that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court upheld the denial of exemption on an organization that made grants to individuals. The organization asserted that its

grants were made in furtherance of a charitable purpose: to assist the poor. The organization was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant. The court held that this information was insufficient in determining whether the grants were made in furtherance of an exempt purpose.

Western Catholic Church v. Commissioner, 73 T.C. 196 (1980). The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court Held that petitioner had not shown it was operated exclusively for exempt purposes or the no part of its earnings inured to the benefit of its officer.

Application of Law

Section 501(a) of the Internal Revenue Code provides for exemption for organizations operated exclusively for religious, charitable, and educational purposes. Section 1.501(c)(3)-1(a)(1) of the regulations states that if an organization fails to meet either the organizational test or the operational test, it is not exempt. We cannot determine and you are unable to substantiate that your fund distribution program is furthering exclusively 501(c)(3) purposes you are not described in section 501(c)(3) of the Code. Because you are not described in section 501(c)(3) you fail the operational test and are not exempt.

You are unlike the organization described in Revenue Ruling 66-79, as you have provided no evidence you review and approve the projects for which you solicit funds or have control and discretion over distributed funds. Despite the provision in your Bylaws for regular meetings, to date, none have been held. You have no meeting minutes or other documentation substantiating fund distributions. Despite your statement that pre-grant inquiries would be made no evidence has been provided to confirm these were done. You have also shown no evidence of control and discretion over the use of the funds you did distribute. After stating L and M would no longer sign checks at least three more were written to H containing F's signature; demonstrating a lack of control over financial transactions. You've provided no evidence of follow-up procedures to ensure proper use of funds by H despite the statements made that these would occur.

You are unlike the organization described in Revenue Ruling 68-489 as you have provided no evidence that you retained control and discretion over the use of your funds awarded to H. You were unable to produce documentation showing how you ensured funds were used by H for 501(c)(3) purposes. You have indicated funds were limited to certain projects, yet you have provided no evidence those projects furthered your purposes. Although you created an application and follow up procedures you have either not followed or have been unable to substantiate that you have followed these procedures. When asked for copies of your grant application or follow up reports you indicated that you could not find any record of prior correspondence or record of being contacted. You have no meetings, no minutes, no discussions, and you have failed to compile or retain such records. Overall, you have been unable to provide documentation to demonstrate maintenance or control over the funds you have distributed to H.

In Church in Boston the court upheld the denial of exemption on an organization that made grants to individuals when information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose. Like the organization in that ruling, your method of distributing grants shows no manner of objective selection and you've provided no documentation demonstrating your distributions have furthered an exempt purpose. You provided no criterion for why grants were awarded and no reasoning behind the amounts given. The selection and distribution relied on a familiarity of H and their immediate need versus a structured application and review process. There is a lack of documentation demonstrating what these funds were used for and for this reason we cannot determine these were used for 501(c)(3) purposes.

As seen in Western, a lack of sufficient records made it impossible to trace the use of that entity's money completely and that organization was denied exempt status. Here, while you have shown the beginning and end results of the movement of funds, what took place before and after that movement is not documented. You are unable to show any formal process that took place prior to distributing funds to H, and you are unable to show any follow up activity that took place once H had full control and use of said funds. For this reason we are unable to determine the use of those funds or the reason why they were awarded. Since we cannot determine, especially, how those funds were used or why they were awarded, the determination cannot be made that they were used for 501(c)(3) purposes. Since your sole activity is the distribution of funds, and those funds cannot be confirmed to have been used for charitable purposes, you are not operated exclusively for 501(c)(3) purposes.

You allowed non-board members, L and M, to sign for and receive your bank statements as well as sign and authorize checks. You delegated your authority, responsibility, and operations to individuals outside of your organization's internal operating control. You allowed non-board members and otherwise unauthorized individuals who have no official responsibility access to your day to day finances and accounts. These fact patterns are also consistent with Western, where lack of control over an organizations funds failed to establish an exempt purpose consistent with Section 1.501(c)(3) of the regulations.

Conclusion

Based on the above facts and law, we conclude you do not qualify for exemption under section 501(c)(3) of the Code as you are not operated exclusively for 501(c)(3) purposes. You lack documentation, records and evidence that distributions were made and used for exclusively 501(c)(3) purposes. You have not held any meetings resulting in no recordation. Individuals outside the purview of your organization had signatory authorization on accounts. You do not exercise adequate discretion and control over funds you have distributed and therefore you do not qualify for exemption under 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. 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

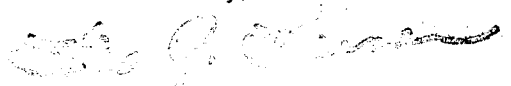
Deliver to:

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