



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201250028**
Release Date: 12/14/2012

Date: September 18, 2012

UIL: 501.03-30; 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,

Holly O. Paz
Director, Exempt Organizations
Rulings and 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: July 30, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = President and Founder
C = Date
D = State
t = Dollar Amount

UIL:

501.03-30
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 your activities further an exempt purpose consistent with exemption under section 501(c)(3) of the Code? No, for the reasons stated below.
- Do your net earnings inure to the benefit of individuals and insiders, thus precluding exemption under section 501(c)(3) of the Code? Yes, for the reasons stated below.

Facts

You were incorporated on C in the state of D to "assist the general public with foreclosure services". Your purposes as described in your By-Laws are to raise funds to help, assist and represent the victims of foreclosures.

You explained that you will not provide services such as individual lawsuits, loan modifications or legal representation to avoid a foreclosure. According to your Business Plan your focus is to raise funds from approximately 8 million foreclosure victims across America with a one time

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

donation of t dollars per individual. Your activities are to organize millions of victims of foreclosure into one single entity to empower and finance a nation-wide lawsuit. Your five year projected budget reported your support will be primarily from individual donations of approximately \$600 million. The same five year budget projected approximately \$344 million for the cost of the lawsuit.

Your ultimate goal is to finance a nation-wide class-action lawsuit representing your individual donor participants who are considered foreclosure victims. You stated "class-action, mass joinder and individual lawsuits have been processed all over the country against several financial institutions to no avail". You explained that "you offer the only available opportunity to file such a lawsuit against the perpetrators of the present housing holocaust".

Your website posts articles and videos about the foreclosure crisis and why individuals should "take action" by joining and registering to participate in a nation-wide class action lawsuit against the banking industry and federal institution(s). You explained that you were founded due to the extreme necessity for the millions of past and present homeowners seeking justice for the repossessions of their homes. The individuals who register as participants on your website must acknowledge that you do not make any promises and/or guarantees to recover money from any lawsuit(s) filed. You anticipate that the distribution of funds recovered from any lawsuit will be determined by the judge and distributed to the participants by a Trustee/Administrator.

You represent that you are not associated with any law or brokerage firms, political parties, religious ministries or banking institutions. Your donor participants will select the law firm(s) you will use to legally represent them in a class-action lawsuit through a voting process. Once the lawsuit is filed your donor participants are then known as the plaintiffs. The defendants in the lawsuit are not yet known, but are referred to as "the perpetrators responsible for the existing and unjustifiable housing holocaust".

Your Founder, B, describes himself as a victim of foreclosure and at a personal level is also a participant in your potential lawsuit(s). In addition to the possibility of sharing in the financial settlement in your class-action lawsuit, B will receive a salary of approximately \$150,000 for performing duties as your President. You also have three other governing body members, each of which will receive compensation of at least \$100,000 annually.

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 Income Tax 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(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 that 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 provide that an organization is operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). It is not so operated if more than an insubstantial part of its activities do not further those purposes.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for exempt purposes if its net earnings inure to the benefit of private individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that to be charitable, an organization must serve a public rather than a private interest. The organization must 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. The private benefit restriction is not limited to benefits provided to insiders. Rather, the restriction applies to benefits provided to any individual, whether or not the individual is in a position to control or influence the organization. The private benefit restriction operates against all parties who receive a benefit not accorded the public as a whole.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Revenue Ruling 80-278, 1980-2 C.B. 175, describes an organization that qualified under Section 501(c)(3). Its purpose was to protect and restore environmental quality and its principle activity consisted of enforcing environmental legislation through instituting litigation as a party plaintiff. This was accomplished by employing private attorneys to represent it in bringing and maintaining environmental litigation. Such lawsuits were not brought in cases where a substantial purpose was to benefit a private party or interest.

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 or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F2d 344 (4th Cir. 1973) cert. Denied 413 U.S. 910 (1973) the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable, religious or educational purposes. Instead, your activities do not further an exempt purpose and you are substantially benefitting private shareholders and individuals as defined in section 1.501(a)-1(c) of the regulations.

You do not meet the requirements of section 1.501(c)(3)-1(a)(1) of the regulations. Although your

organizing document contains the appropriate language to meet the organizational test, the manner in which your activities are conducted does not satisfy the operational test.

You are not operating in accordance with section 1.501(c)(3)-1(c)(1) of the regulations. Collecting a fee of t dollars from individuals who have been foreclosed on, or who are facing foreclosure, and organizing a class-action lawsuit furthers no exempt purpose specified in section 501(c)(3) of the Code. This shows that more than an insubstantial portion of your activities do not further 501(c)(3) purposes.

Furthermore, if you complete your goal of winning a lawsuit, distributions will go to your participants directly. Your participants are private shareholders and individuals as defined in section 1.501(a)-1(c) of the regulations, who do not represent a charitable class. The facts show participation in the class-action lawsuit is open to any individual dealing with foreclosure. The fact that your services are open to the general public and are not restricted based upon income or any other charitable criteria, shows you are not providing relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serving any other purpose recognized as charitable. As described in section 1.501(c)(3)-1(c)(2) of the regulations, this shows you are not operated exclusively for exempt purposes because your net earnings inure to the benefit of private individuals.

Likewise, you do not meet the requirements of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You have not established that you serve a public, rather than a private interest. In fact, your planned distribution to your participants shows a substantial purpose to serve the private interests of your participants. Since your president and other members of your governing body are also participants, this benefit constitutes inurement.

You are not like the organization described in Revenue Ruling 80-278. The purpose of the lawsuits brought by the organization in this ruling was to enforce environmental legislation for the public good. No private individuals benefitted as a result of the lawsuits. Your activities are directed towards soliciting participants in a class-action lawsuit where your ultimate goal is to reward your participants financially. Unlike the organization in the ruling, the results of your lawsuits benefit the private individuals who are participants. Therefore, your litigation activities do not achieve an exempt public purpose similar to the organization described in Revenue Ruling 80-278.

Like the organization in Better Business Bureau of Washington, *supra*, a substantial part of your activities consists of benefitting the private interests of your insiders and participants and thus, serves a substantial nonexempt purpose. The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption

Finally, you are like the organization described in Old Dominion Box Co. v. United, *supra*, since you are operating for the substantial non exempt purpose of benefitting your founder and participants.

Taxpayer's Position

You are collecting a one time contribution from millions of foreclosure victims in order to gain the financial strength needed for a class-action lawsuit. You contend that you are providing a

charitable service by organizing those victims into one single entity that can seek justice from "the perpetrators of the present housing holocaust." You further contend that this provides a service to the victims of foreclosure that is not otherwise available to them and is therefore a tax exempt activity.

Service Response to Taxpayer's Position

As explained above, providing services to victims of foreclosure by organizing a class-action lawsuit does not further an exempt public purpose as defined in section 501(c)(3) of the Code. The individual participants do not represent a charitable class. The facts show that any individual who is facing foreclosure may participate and your participants are not restricted based upon income or any other charitable criteria. Furthermore, your activities benefit private individuals with a personal interest in your activities and further no public purpose.

Conclusion

Your activities do not further an exempt public purpose consistent with exemption under section 501(c)(3) of the Code. Furthermore, the facts show that your participants do not represent a charitable class and receive substantial private benefit as a result of your activities. Since your insiders are also participants, this benefit constitutes inurement.

Accordingly, you do not qualify 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,

Holly Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure, Publication 892