



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201305012**
Release Date: 2/1/2013
Date: November 9, 2012
UIL: 501.32-00; 501.32-01; 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,

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: **September 19, 2012**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
C = State
D = legal organization
E = founder/director/employee
F = related for-profit
G = program
L = director/employee 1
M = director/employee 2
h dollars = up front fee
j dollars = monthly fee
k dollars = salary

UIL:

501.32-00
501-32-01
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

- Do you meet the organizational test under section 501(c)(3) of the Code? No, for the reasons described below.

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

- Do you meet the operational test under section 501(c)(3) of the Code by operating exclusively for an exempt purpose? No, for the reasons described below.
- Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons below.

Facts

You are a non-profit corporation formed on B under the laws of the State of C. Your Articles of Incorporation were amended to change the type of corporation from mutual benefit with members to public benefit with members. Section 3 of the Articles describes your business as: "services for the elderly and persons with disabilities." Section 7 of the Articles provides that your assets are to be disbursed to D upon dissolution.

You were formed to provide a program for seniors and disabled persons to prevent creditor harassment. Your concept was originated by E, senior partner of F, a bankruptcy law firm located in C. Many seniors and disabled persons are on limited income such as social security and/or pensions, yet they carry significant credit card, medical and other unsecured debt which they have insufficient income to pay. Creditors call, badger and harass such persons through multiple letters and phone calls. Such individuals have two alternatives: deal with the harassment or file bankruptcy. The cost of filing Chapter 7 bankruptcy has increased significantly since the 2005 Bankruptcy Reform Act. Therefore, the individuals cannot afford to pay the debt or to file for bankruptcy. Due to the fact that they are judgment-proof as a result of their limited income, filing bankruptcy is not necessary. E developed a program within F called G. G has been in existence for three years and includes more than 500 seniors. G takes advantage of provisions in the law that provide that creditors are not permitted to contact a debtor by telephone or mail once the individual is represented by an attorney. F charges an upfront fee of h dollars and monthly fee of j dollars to clients wishing to stop harassment by creditors.

The program is made available to judgment proof seniors and disabled persons receiving primarily social security, pension or disability throughout multiple jurisdictions. Clients of G as operated by F will be transferred to you. You will continue to charge the same fees as those charged by F. You do not have a fee schedule. Fees will be modified down so this service can be provided to all that need help. As the program grows you will bring in other attorneys as necessary to represent judgment proof clients to prevent creditor harassment. The attorneys will not represent clients in challenging lawsuits. The only service provided is to communicate with creditors regarding the client's judgment proof status. As a section 501(c)(3) organization you will be able to obtain referrals from legal aid organizations. You do not anticipate soliciting contributions, you will be self-sustaining from the fees charged for services. The fees charged will provide funds for you to send out mail to fulfill your function, hire employees to communicate with clients and creditors, and advertise your services in a limited manner.

Clients are interviewed over the phone or via a written application to determine if they qualify for the program as being judgment proof. You then send a letter to each creditor as indicated by the client advising that the client is now represented by an attorney. If a client is sued by a creditor

you will contact the attorney representing the creditor and submit proof that the client's income is exempt from judgment. You provide no other legal representation. Clients may contact you at any time with questions. You maintain a website providing information about your services. You also submitted a promotional flyer and brochure about your program. In addition, you submitted a copy of your adopted conflict of interest policy.

E is the managing partner of F. E will receive compensation of k dollars annually to oversee your operations, approximately 30 hours per week. The amount of E's compensation is based on his active experience as an attorney in the region. Your Board of Directors is composed of E, L and M. L is a bankruptcy attorney and partner of F. M serves as an employee of F. M's services are currently "leased" to you. L and M were voted onto your Board by E, acting as your sole initial director. You also lease the services of three other employees from F. Eventually, M as well as the other leased employees will cease to be employees of F and will work solely for you. You sublease your facility from F. Under the lease agreement you and your visiting clients will share parking lot space with F and have reasonable access to the designated client meeting rooms for your clients. In addition, your employees and clients will have access to common areas (break room/bathrooms), a main reception area and the computer service room. Two of the rooms leased by you are segregated by doors and locks from F's space. You also lease office equipment from F, including desks, chairs, computers and a printer.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides 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.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities

that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that 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(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that the applicant organization must show that it serves a public rather than a private interest and specifically 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 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.

In Revenue Ruling 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

Revenue Ruling 72-124, 1972-1 C.B. 145, describes an organization that operated a home for

the elderly. It qualified for exemption under 501(c)(3) as a charitable organization because it met the special needs of the elderly for housing, healthcare and financial security. The need for financial security, i.e., the aged person's need for protection against the financial risks associated with later years of life, will generally be satisfied if two conditions exist. First, the organization must be committed to an established policy, whether written or in actual practice, of maintaining in residence any persons who become unable to pay their regular charges. As to the second condition respecting the provision of financial security, the organization must operate at the lowest feasible cost, taking into consideration its expenses.

Revenue Ruling 76-244, 1976-1 C.B. 155, describes a charitable organization that provided home delivered meals to elderly and disabled persons. Volunteers delivered the meals. A nominal fee that was insufficient to cover the costs of the meals and delivery was charged. In some cases, no fees were charged depending on the recipients' abilities to pay. The organization qualified for exemption under section 501(c)(3) of the Code.

Revenue Ruling 77-246, 1977-2 C.B. 190, describes an organization that was formed to provide low cost bus transportation for senior citizens and disabled persons in a community where public transportation was unavailable or inadequate. Although the organization charged a nominal fee, it was dependent upon contributions and federal and local governmental grants in order to meet its operating expenses. The organization qualified for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

The ruling in 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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In P.P.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar accountant, also the director of the bar, as well as two players. The board was self-

perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In Orange County Agricultural Society, Inc. v. Commissioner, 893 F.2d 529, 534 (2d Cir. 1990), the appellate court affirmed the Tax court's holding that loans extended on advantageous terms to its founders, or to an entity controlled by them, indicates private inurement. In Orange County, the loans were interest-free and, while some payments were made, the repayments did not match the loan amounts and there was no evidence in the record that the full amount loaned would ever be repaid.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses

commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

Application of Law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1). You fail both tests.

Organizational Test

To demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause and a valid dissolution provision, as specified in section 1.501(c)(3)-1(b)(1)(i) and section 1.501(c)(3)-1(b)(4) of the regulations. You do not have a valid purpose clause. A valid purpose clause must limit your purposes to those described in section 501(c)(3) of the Code. Your Articles of Incorporation in section 2 identifies your "Description of Business" as "Services for the Elderly and Persons with Disabilities". You also do not have a valid dissolution clause. Section 7 of your Articles of Incorporation states that your assets are to be disbursed to D upon dissolution. There is no evidence that D is a section 501(c)(3) organization. In addition, your Articles do not contain a provision to ensure that in the event D is not a section 501(c)(3) organization, the assets will be distributed to another section 501(c)(3) organization or used for section 501(c)(3) purposes. You do not have a valid purpose or dissolution clause. Therefore, you do not meet the organizational test.

Operational Test

To satisfy the operational test of IRC section 501(c)(3), an organization must establish that it is operated exclusively for one or more exempt purposes as specified in section 1.501(c)(3)-1(c)(1) of the regulations. As noted in Better Business Bureau of Washington, D.C. v. U.S., the presence of a single non-exempt purpose precludes exemption regardless of any valid exempt purposes. You failed to establish that you are operated exclusively for one or more exempt purposes. Your proposed activities are not charitable as provided in section 1.501(c)(3)-1(d)(2) of the regulations.

Your Activities Are Not Charitable

All of your time and resources are devoted to providing legal services, for a fee, to individuals on limited income who are being harassed by creditors. Providing legal services for a fee does not provide relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable. Although your service is limited to seniors or the disabled on limited income, providing a service for a fee is a commercial activity, not a charitable one.

The legal services you provide to individuals do not further charitable purposes. You "represent" individuals being harassed by creditors. Your clients cannot afford to pay their debts or file for

bankruptcy due to their limited income. The service you provide is limited to notifying creditors that the client is represented by an attorney thereby preventing the creditor from further contact with the debtor (your client). You do not provide representation in the event a client is actually sued by a creditor. Notifying creditors, for a fee, that you are a legal representative of a charitable beneficiary does not relieve the poor and distressed. Accordingly, you are unlike the organization described in Revenue Ruling 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. You do not provide counseling or assistance in paying off the debts of your clients. In addition, you charge a fee for your service. The organization in the revenue ruling provided their services free of charge.

You are distinguishable from the organization described in Revenue Ruling 72-124. Although you provide a service to stop verbal and written harassment of seniors by creditors, you do not meet their special needs, such as financial security, housing or healthcare. While your services are provided to low income seniors or disabled individuals, you charge an upfront fee and a monthly fee for your services. Although you do waive or reduce fees for those who cannot afford them, you do not have an established fee waiver policy. Nor have you submitted evidence that you operate at the lowest feasible cost.

You are distinguishable from the organization described in Revenue Ruling 76-244. You are dependent on the service fees you bill your clientele in order to operate. Your fees cannot be described as nominal. You operate in a commercial manner like any law firm. You determine your costs and set your fees to meet your financial obligations. Finally, you are not like the organization described in Revenue Ruling 77-246 because you are dependent on the fees you charge to cover your expenses. The majority of your expenses are salaries and wages. Thus, you failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

You Have a Substantial Nonexempt Commercial Purpose

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose. See e.g., B.S.W. Group, *supra*; Easter House, *supra*; Airlie, *supra*; Living Faith, *supra*. Generally, the factors proffered by courts focus on the nature of the activities and how an organization conducts its business.

Your only activity consists of providing legal services for a fee. Providing legal services for a fee is not an exempt purpose, as recognized by statute or by case law, but rather a substantial nonexempt commercial purpose. You charge h dollars up front and j dollars monthly to provide letters to the client's creditors notifying the creditor that the clients are judgment proof based upon their incomes and are represented by you. These fees do not entitle your clients to any educational programs or services beyond those that are offered by for-profit attorneys, a situation similar to that found in Living Faith, *supra*. This is evidenced by the fact that F charged exactly the same rates for exactly the same services. Adopting a fee structure that is identical to that used by a for-profit also demonstrates that you are operating like a commercial organization seeking to maximize profits, rather than a charitable or educational organization seeking to serve the public. B.S.W. Group, *supra*. As you stated, you do not plan to solicit donations or other contributions but will be self-sustaining on fees for services. You did not

budget any money for educational or charitable activities. Thus, similar to the organization in Easter House, *supra*, the profit-making fee structure of your consulting services overshadows any of your other purposes.

Your financial structure further demonstrates that you operate for a substantial nonexempt commercial purpose. You indicated that you will not fundraise or solicit government grants. The only donation you received was from F. You do not have a plan to solicit donations in the future as you expect to be self-sustaining based upon fees for services. There is also no evidence that you have received contributions or gifts from disinterested members of the public. Accordingly, you are unlike the organizations described in Revenue Ruling 69-441, *supra*, that received the bulk of their support from government and private foundation grants and contributions. Your operations are financed entirely by revenue earned from selling services to clients. Receiving support primarily from legal fees is indicative of a nonexempt, "business", purpose similar to the organization in Easter House, *supra*.

Like the organizations in Easter House, *supra*, Airlie, *supra*, and Living Faith, *supra*, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit. In fact, you share office space, supplies, directors, and employees with F, a commercial firm that provides legal services including bankruptcy representation. In addition, your program was begun and conducted in the same manner as a commercial enterprise. For example, you use similar pricing, financial structure, advertising, and relationships with other for-profit companies. Your activities evidence a substantial nonexempt commercial purpose. Thus, more than an insubstantial part of your activities are in furtherance of a nonexempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations and sufficient for disqualification of exemption as noted in Better Business Bureau of Washington, D.C., *supra*. Therefore, you are not operated for an exempt purpose.

Inurement

As stated in section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(2) of the regulations, 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.

You are similar to the organization in Leon A Beeghly v. Commissioner, *supra*, in that you engage in transactions with a purpose to benefit a private interest. You provided a lease agreement entered into between F and a lessor as well as a sublease between you and F. The sublease covers an office and a meeting room. The sublease calls for you to pay annual rent of approximately 20% of the total lease amount paid by F. You indicated that F is charging a "reduced rate", although you did not submit any independent documentation of the fair market rental value of the space. The sub lease states that the leased space is 800 square feet. However, you stated elsewhere that the lease covers 1,500 square feet. F also leases office equipment to you. No documentation has been submitted to establish the fair market rental value of the leased equipment. Finally, you lease several employees from F. No information has been submitted regarding how the amounts of compensation were determined. All three of your directors are either employees or partners of F. You have not established that your net earnings do not inure to the benefit of F through your sub-lease, employee lease and equipment lease agreements.

You are similar to the organization in P.P.L. Scholarship v. Commissioner, *supra*, where the bar owners controlled the organization and appointed the organization's directors. You submitted a conflict of interest policy. However, all three of your directors are considered interested parties under the policy. Your directors determine their own salaries. How much they pay themselves is based on industry levels and the value they attach to their own experience. The amounts have not been negotiated at arm's length, nor are they based on objective factors or an independent appraisal. Your initial aggregate fixed payments including compensation and lease payments to F equal approximately 92% of your projected revenues. Like the organization in the P.P.L. Scholarship decision, your activities could be used to the advantage of your directors.

You do not have adequate safeguards to protect you in your dealings with F. Under the terms of your conflict of interest policy, all of your directors are prevented from determining whether a conflict exists with regards to transactions or arrangements with F. In addition, your directors are charged with determining each other's salary. Thus, you failed to demonstrate that insiders will not benefit from your relationship with F. Despite your inability to determine whether a conflict of interest exists with regard to dealings with F, you continue to share office space, employees and equipment. You did not provide evidence your directors will be prevented from using you to reduce the expenses of their for-profit business. You did not indicate how or when you determine which potential clients are seeking your services as opposed to F's services. As was the case in Orange County Agricultural Society, *supra*, your directors have control over financial decisions with F, and your directors stand to benefit from the decisions. Yet you provided no evidence that net earnings will not inure to your directors' benefit.

You failed to establish net earnings will not inure to the benefit of your directors. You failed to establish that transactions with F are at "arm's length." You did not establish that you will segregate your clients in a way that ensures F does not benefit.

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes. You are not organized exclusively for exempt purposes because you do not have a valid purpose or dissolution clause. You are not operated exclusively for an exempt purpose because your primary purpose is the provision of legal services for a fee. You are organized and operated for commercial purposes. Any public purposes for which you may operate are only incidental to this primary non-exempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals. You do not serve a public rather than a private interest. Therefore, you are not described in section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

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. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed 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."

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 O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure, Publication 892