



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201314049**
Release Date: 4/5/2013

Date: January 11, 2013

UIL: 501.03-00; 501.03-30; 501.32-00;
501.33-00; 501.36-01

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.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: November 7, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = state

D = date

C = organization

d = dollar amount

e = dollar amount

X = individual

UILs:

501.03-00

501.03-30

501.32-00

501.33-00

501.36-01

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Issue

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

Facts

You were incorporated on D as a nonprofit under B law. Your Articles of Incorporation state that you are organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code, including for such purposes, the making of distributions to organizations that also qualify as section 501(c)(3) organizations. Your Articles also state that you provide monthly educational workshops to teach your clients on how to save their homes and credit history, and provide loss mitigation options including, but not limited to, loan modifications, short payoff refinances, repayments plans and special forbearance.

You initially had four board members, but, due to the time and lack of funds, you are now down to one board member, X, your founder and president. You state you were initially registered as an S-corporation, and you submitted materials outlining your history in that
Letter 4036

X would "only have interest in ownership (of you), the company is minority owned and operated". You have not held any board meetings for last three years.

% of your time is spent providing mortgage foreclosure counseling and loss mitigation services to homeowners in trouble with their mortgages as a U.S. Department of Housing and Urban Development ("HUD") or C certified counseling agency. You aim to help homeowners stay in their homes, educate them, and avoid foreclosure. You will also provide loan counseling in the form of workouts and modification, and loan servicing for refinancing of potential foreclosures. Since your inception, you have provided many homeowners with these services. You do not have any income or asset limitation on who qualifies, stating everyone who is a homeowner may receive guidance. % of your activities consist of housing and financial seminars, workshops, and classes to the public. The rest of your time consists of wellness, food, and job aid programs to needy people.

Foreclosure counseling starts with a phone consultation to gauge a potential client's eligibility, gather their personal and mortgage information, and schedule a one-on-one in person appointment. You then conduct an interview and a budget analysis to determine ability to maintain their home. You have not performed any foreclosure counseling, and have no forms or materials regarding your counseling service.

For mortgage mitigation clients, you collect further information including tax returns, bank statements and bills, and provide a complete financial analysis and property value report. You prepare and present a mortgage modification package to lenders, negotiating lower mortgage payments with the lenders, and providing the modification agreement to the clients.

You contact mortgage modification clients either by email or phone weekly, as well as telephoning lenders to ensure there are no outstanding documents needed and to update the status of the modification to the clients. You are involved with your clients for 12 months after the approval of the mortgage modification by keeping a track of the clients' payments, conducting mandatory quarterly seminars, and holding a open forum. Your educational seminars and forums consist of % foreclosure counseling. You did not explain how you carry out the mandatory seminars, nor did you provide any seminar schedule or copies of the materials you will use. These classes would be open to the public and free, however, you have conducted none of these and have none scheduled. You do not charge fees to your clients; however, you charge a d dollars fee per file to lenders for your "fee-for-fee services". You plan on serving at least 1000 clients per month.

You will not advertise your services due to limited funding, relying on word of mouth. You indicated that when you open your doors you will provide services to friends and family as payment for referrals to help people become familiar with what you offer. You plan on support from grants, member/partner fees, and service fees. Regarding member fees, you stated in return they would receive additional services, but not what additional services. Further, partners would benefit as you help them streamline their process of mediation between them and their customers with modifications, forbearance,

foreclosures, etc. Regarding services fees, you intend on contracting with loss mitigation departments of banks to offer services as reasonable fees – the fee for fee service mentioned above. You also presented details for fundraising including benefit concerts and vendor markets. Given your statements on operations and income, these were planned, but did not occur.

Your main expenses include compensation, occupancy and professional fees. You have projected compensation for X of e dollars. Your budget shows you will pay additional officer(s) compensation totaling at least \$ for the first year of operations, rising to at least \$ in your second year. However, you have stated you will depend on volunteer workers for first 24 months of your operation. When questioned about your professional fees, you stated this was to contract housing and real estate professionals to teach and conduct your counseling and educational services throughout the year. No further details were provided as to any facility.

Law

Section 501(c)(3) of the Code provides that corporations may be exempt 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 501(q) of the Code provides that organizations which provide “credit counseling services” as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

(1)(D) At all times the organization has a board of directors or other governing body--

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term “credit counseling

services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

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 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 an applicant organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, 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.

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

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

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a non-profit 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 with 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 neither charged fees for counseling services nor prorated their services. 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. Creditors were not required, though, to make such contributions as a condition of participation.

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 76-441, 1976-2 C.B. 147, presents two situations concerning school operations. In the first scenario, a nonprofit school succeeded to the assets of a for-profit school. While the former owners were employed in the new school, the board of directors was completely different. The ruling concludes that the transfer did not serve private interests. Part of that conclusion was based on the independence of the board. In the second scenario, the for-profit school converted to a nonprofit school. The former owners became the new school's directors. The former owners/new directors benefited financially from the conversion. The ruling concludes that private interests were served.

Rev. Proc. 86-43, 1986-2 C.B. 729, describes the methodology test the Service uses to determine when the advocacy of a particular viewpoint or position is educational under sections 501(c)(3) of the Code and 1.501(c)(3)-1(d)(3) of the regulations. The revenue procedure states that the focus of section 1.501(c)(3)-1(d)(3) is on the method the organization uses to communicate to others, not the content of its communication. The method of communication is not educational "if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process." One factor indicating the method is not educational is as follows: "[t]he approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter." The remaining factors relate specifically to advocacy organizations and the "full and fair exposition" part of the regulation.

Rev. Proc. 2012-9, 2011-2 I.R.B. 283, provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed.

Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

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."

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational. The Consumer Credit Counseling Service of Alabama was an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. As such, the community and education counseling assistance programs were the agencies' primary activities. The

primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), an organization was formed to provide education and charity, but failed to provide sufficient details regarding its proposed operations. The court held that it failed to prove that it would operate exclusively for exempt purposes under section 501(c)(3) of the Code.

In Housing Pioneers, Inc. v. Commissioner, 58 F.3d 401 (1995), the court affirmed the judgment of the trial court that the organization was not entitled to tax-exempt status as a corporation operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. The court found that the organization's substantial purpose of helping a for-profit business take advantage of its tax-exempt status was a nonexempt purpose even if it had the effect of making housing more affordable.

In KJ's Fund Raisers, Inc. v. Commissioner, T.C. Memo 1997-424 (1997), aff'd 82 AFTR 2d 7092 (1998), the Tax Court found that 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, Kristine Hurd and James Gould, 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 in KJ's Place, the lottery ticket purchasers were sold beverages. The initial directors were Hurd, Gould, and a related individual. The initial board was replaced several times until Hurd and Gould were no longer on the board. At all times Hurd and Gould were the organization's officers. Salaries had been paid to Hurd and Gould 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." This strongly suggests that Hurd and Gould are free to set policy for their own benefit without objection from the board.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service's denial, stated "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant." The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court

also highlighted the principle that exemptions from income tax are matters of legislative grace.

Application of Law

You are not operated exclusively for charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code nor Section 1.501(c)(3)-1(a) of the Income Tax Regulations and therefore fail to meet the operational test. Specifically, the facts above indicate that you are not operated for 501(c)(3) purposes. As more than an insubstantial part of your activities are not in furtherance of an exempt purpose, you fail to meet the operational test, and do not qualify for exemption under 501(c)(3).

Operational Test

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 as specified in section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(1) of the regulations. Under the operational test, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization.

You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, above, and Rev. Rul. 69-441, by the methodology you use to conduct your counseling activities. You do not offer counseling that structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. You are only providing a service when you assess and analyze a homeowner's financial situation, or prepare paper work, to negotiate with lenders for lower mortgage payments. Such work does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process. See Rev. Proc. 86-43, above.

You conduct mandatory quarterly seminars and a open forum as part of your counseling, however, you did not provide further explanation or detail how you actually carry out these seminars. You also failed to provide a seminar schedule or identify seminar materials. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met See La Verdad v. Commissioner and section 4.03 of Rev. Proc. 2012-9, above.

You failed to establish that your interactions with clients provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

You Are Not Operated Exclusively for Charitable Purposes

You failed to show that your activity is charitable since you do not limit your services. Providing mitigation and counseling services to those with mortgage problems does not provide the relief of the poor and distressed or of the underprivileged. See section 1.501(c)(3)-1(d)(2) of the regulations.

The individuals who are eligible for a modification or other forms of mortgage assistance include all income levels. Thus, you are unlike the organizations described in Rev. Rul. 69-441, above, which aided low-income individuals and families who have financial problems, and therefore relieved the poor and distressed.

You Have a Substantial Non-exempt Purpose

You operate for the substantial commercial purpose of providing foreclosure counseling to the public. See, Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), in which 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. Your foreclosure counseling is no different from those of a commercial mortgage mitigation company. You do not charge your clients. Instead, you intend to negotiate contract fees with entities such as banks. The court in American Institute for Economic Research v. United States, above, held that an educational organization was not entitled to the exemption because it conducted the sale of many publications as well as the sale of advice for a fee to individuals. You are similar in terms of selling services for lenders' payments.

Inurement/Private Benefit

You have failed to establish your structure and manner of operation will not result in inurement and/or private benefit to X (section 1.501(c)(3)-1(c)(2) of the regulations). X started you as her private company, sets her own compensation, is the only board member; and as a result has unchecked control over your operations and finances. In fact, you are similar to the organization in KJ's Fund Raisers, Inc. v. Commissioner in that you do not have checks and balances over your founders' compensation. In this case, the court ruled even with independent board members the presence of private benefit to the bar owner was far too evident. Also see the case of Housing Pioneers, Inc. v. Commissioner, above. The court did not allow the organization's exemption regardless of its valid exempt activities because it helped a for-profit business. Revenue Ruling 76-441 confirms the importance of an independent board in determining the presence of private interests and benefits. You do not have an independent board. Your only board member is described as an owner and has sole control over you. Therefore, you failed to establish that you are not operated for your founders' private interests in accordance with section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Thus, to be exempt from taxation you must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q).

Only one governing member is compensated for the work they provide for you. Therefore, your governing body does not comply with section 501(q)(1)(D)(ii) that requires that at all times the organization must have a board of directors or other governing body not more than 20 percent of the voting power of which is vested in persons who are employed by

the organization or who will benefit financially, directly or indirectly, from the organization's activities, because 100% of your governing body directly benefits from your organization's activities.

Therefore, had you established that your operations satisfied the requirements of section 501(c)(3), your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

Failure to Establish Qualification for Recognition of Exempt Status

An applicant is required to submit sufficient information during the application process for the Service to conclude that the organization is in compliance before a ruling is issued. See La Verdad v. Commissioner and section 4.03 of Rev. Proc. 2012-9, above. In many instances, you did not provide explanations required. For example, you did not describe how you will apply for certification as a HUD housing counseling agency even if you clearly intend to be one. You did not provide any details or scripts of your foreclosure counseling, citing that you have not performed any yet. Your business plan shows that you have provided service to many homeowners. You also failed to provide any details about your "fee-for-fee service" to lenders, which is an important factor in distinguishing you from a commercial entity. Exemption from federal income tax is not a right but rather a matter of legislative grace. See New Dynamics Foundation, above. In addition, an organization has the burden of providing sufficient substantive information regarding its activities and operations to establish entitlement to tax-exempt status. See Harding Hospital, Inc. v. United States, above. You failed to provide an adequate basis for us to determine that you are organized and operated exclusively for exempt purposes.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes because your activities are not exclusively charitable, you serve a substantial non exempt purpose and have failed to show you are not serving private interests resulting in inurement. Additionally, you do not meet the requirements under IRC 501(q). Accordingly, you do not qualify for exemption as an organization described in 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:

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

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