



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201452017**
Release Date: 12/26/2014

Date: October 2, 2014

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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,

Michael Seto
Manager, Exempt Organizations
Technical

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



Department of the Treasury
Internal Revenue Service
1111 Constitution Ave. NW
Washington, DC 20224

Date: August 11, 2014

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

Company =

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please, keep it for your records.

Issue

Whether you qualify for exemption as an organization described in § 501(c)(3).

Facts

Your narrative response states that you will operate a website that will act as a social network connecting individuals to non-profit organizations. Your narrative response provides that your website is designed to facilitate donations from individuals to charitable organizations, churches, and other individuals. The website will allow anyone seeking to receive donations to create a profile page similar to those found on Facebook so that individuals can read about and donate to those entities. You will further facilitate the donations, ensuring that they get to the intended recipient. The website will not only provide a destination where organizations can raise funds, but it will also provide a location where organizations can keep its donors up to date

with recent pictures and comments about its current activities. You will seek to integrate your website into other social networking sites in order to utilize the power of viral marketing helping organizations spread their message. You state that you will charge a transaction fee on donations given to organizations using your website. The Terms of Service for the website indicate that you will receive a 2.6 percent fee plus sixty cents per credit card transaction while you will receive a .5 percent fee plus sixty cents per check transaction. You indicate that you expect \$7,500 to \$18,000 in fees in each of the first two years. You also indicate that you expect that these fees will simply cover the costs of operation with no additional revenue.

You have clarified that while a website containing the above activities will be operated by Company on a for-profit basis, you will only conduct activities associated with the website in regards to “unclaimed” profiles. As part of the website you will create “unclaimed” pages from the IRS Pub. 78. Individuals visiting the website can donate to these organizations through you despite such organization not having claimed the profile. As part of these services, you will verify that the organization continues to be an organization exempt from taxes under § 501(c)(3) and that they are listed as a public charity. The Terms of Service for the website stipulates that if the designated organization does not meet Taxpayer’s criteria then you will provide the funds to an organization of your choosing that is both described in § 501(c)(3) and as a public charity. You will not provide money to any organization or individual that is not a § 501(c)(3) public charity.

In order to create and maintain this website you have contracted with the for-profit company Company to perform such services. Company is controlled entirely by your three directors. Company will maintain all rights to the web technology used for your website. Company will operate and maintain the website performing all the transactions with individuals or organizations that have created or claimed a profile on which individuals will donate to the organizations. You will not conduct any transactions with these entities and will not pay Company for any service. Company will collect a 3.6 percent fee plus sixty cents on each donation made to a profile that has been created or claimed by an outside entity.

Your Board of Directors contains three directors. All of the directors are related through the ownership of Company and two of those three are married to each other. You will pay these individuals market compensation in their roles as employees in the future.

Law

I.R.C. § 501(c)(3) provides that organizations may be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and “no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that in order to be exempt under section

501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

Treas. Reg. § 1.501(c)(3)-1(d)(2) defines charitable as it is used in its generally accepted legal sense. The term includes the relief of the poor and distressed, advancement of religion, lessening the burdens of government, and the promotion of social welfare by eliminating prejudice and discrimination or by defending human and civil rights secured by law.

Treas. Reg. § 1.501(c)(3)-1(e)(1) states that, "an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513." An organization operated primarily for an unrelated trade or business is not exempt under 501(c)(3).

Revenue Ruling 67-149, 1967-1 C.B. 133, holds that an organization formed for the purpose of providing financial assistance to several different types of organizations which are exempt under section 501(c)(3) of the Code is itself exempt under that section. It carries on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals. The organization does not accumulate its investment income.

Revenue Ruling 69-528, 1969-2 C.B. 127, found that, "an organization regularly carrying on an investment service business that would be unrelated trade or business if carried on by any of the exempt organizations on whose behalf it operates, is not exempt under section 501(a)." This organization was, "free from the control of the participants and [had] the absolute and uncontrolled discretion in (1) investment of the property, (2) sale of investments and reinvestment of the proceeds, (3) payment of taxes and liens, (4) distributions of income and principal or the addition of accumulated income to principal, and (5) dealing with the property and managing the funds as if it were absolute owner thereof."

Revenue Ruling 71-529, 1971-2 C.B. 234, states that, "a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3)." The organization was found to only provide services to those organizations that were controlling it and the services provided were found to be essential functions of the colleges and universities.

Revenue Ruling 72-369, 1972-2 C.B. 245, provides that an organization organized to provide managerial and consulting services to organizations exempt under 501(c)(3) on a cost basis is not itself an exempt organization as there is no recognized charitable purpose.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945),

the court determines that, “the presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes.”

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court denied exemption to an organization for failure to develop criteria for disbursements of grants or to keep adequate records of each recipient. Such failures were determined to potentially lead to abuse thus representing a non-exempt purpose.

est. of Hawaii v. Commissioner, 71 T.C. 1067 (1979), the Tax Court held that compensation need not be unreasonable or exceed fair market value to be private benefit, stating “[n]or can we agree with petitioner that the critical inquiry is whether the payments made to International were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, International and EST, Inc., benefited substantially from the operation of petitioner.”

In Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531, 534 (1980) aff'd, 670 F.2d 104 (9th Cir. 1980), the Tax Court explained that an organization that is closely-controlled by related individuals must clearly demonstrate that private interests will not be served and that net earnings will not inure to the benefit of insiders. Given the control over the petitioner organization by related individuals, the court could not conclude “from the information in the administrative record that part of the net earnings did not inure to the benefit of the [controlling] family or, stated another way, that petitioner was not operated for the [family’s] private benefit.”

P.L.L Scholarship v. Commissioner, 82 T.C. 196 (1984), the Tax Court found that an organization that operated charitable bingo on the premises of a bar allowed the bar to increase its sales of food and drinks by its operations in the bar; thereby, benefiting the bar in more than an insubstantial way. The organization and bar were controlled by some of the same persons. The Court held that the operations of the organization and bar were so interrelated as to be “functionally inseparable,” the effect of which was that any economic benefit the bar received was not incidental.

In American Campaign Academy v. Commissioner, 92 T.C. 1053, 1067-1073 (1989), the court determined that an organization providing training for individuals specifically to work on Republican campaigns was providing prohibited private benefit. In making this determination the court stated that the presence of earnings inuring to the benefit of a private shareholder were not necessary, prohibited private benefit can be gained by an unrelated third party, that a determination of private benefit must examine the charitable nature of the class, and that size alone will not convert an uncharitable class into a charitable one.

International Postgraduate Medical Foundation v. Commissioner, 56 T.C.M. (CCH) 1140 (1989), an organization, whose activity was to conduct continuing medical education tours abroad, exclusively used one for-profit travel agency to arrange its travel tours. The same individuals controlled both the organization and the for-profit travel agency, and the

organization did not solicit bids from any other travel agency. Furthermore, both entities shared the same office. As both entities were interrelated, the Court held that the organization was operated for the benefit of the for-profit travel agency.

Application of law

You must be operated for an exempt purpose. Section 1.501(c)(3)-1(a)(1). Your activities consist of running certain pages on a website consisting of the unclaimed pages belonging to exempt organizations. These pages, if claimed, will allow an organization to inform the public about their activities as well as provide a means for such organizations to receive donations through Company. For providing the platform on which these profiles exist and for transferring the money in a safe manner to the “receivers” on your website you take 2.5 percent plus forty cents for every donation. Your Terms of Service specify that your activities are a service to these organizations for which those using it must abide by the provided terms. You are providing a service to these organizations as well as providing advertising for Company by indicating to exempt organizations with unclaimed pages their ability to use Company more fully.

Providing commercial type services exclusively to exempt organizations is not an exempt purpose. Rev. Rul. 72-369, supra, provides that an organization providing managerial services to exempt organizations on a cost basis is not an exempt purpose under § 501(c)(3). Additionally, Rev. Rul. 69-528, supra, provides that an organization formed to provide investment services exclusively for exempt organizations is not operated for an exempt purpose. In both of these rulings the taxpayer was not controlled by an organization that is otherwise exempt and did not charge a rate substantially below cost. Cf. Rev. Rul. 71-529, supra (exempting an organization that was entirely controlled by exempt universities and provided investment services exclusively to those organizations for a price substantially below cost). Here, you are not controlled by any exempt organization, and you provide services for a fee to any exempt organization. Your fee is not substantially below your costs as you anticipate your service fee to be your primary source of revenue. Therefore, you are not operated for an exempt purpose.

Your activities consist entirely of providing fundraising and public relations services to organizations. Unlike the organization in Rev. Rul. 67-149, supra, you do not retain complete control over your funds when determining to whom those funds will be contributed. Your setup provides for funds to go to organizations of a donors choosing through you, for which you will take a 2.5 percent cut. Additionally, you do not consider these funds to be your funds. You have no charitable purpose outside of the possible provision of grants to exempt organizations, however, you clarified that you do not provide grants to organizations but that the donations are made directly to the other organizations.

In order to be exempt you must also be operated for public, rather than private, benefit. Section 1.501(c)(3)-1(d)(1)(ii). The court in Better Business Bureau, 326 U.S. 279, states that the presence of private benefit, if substantial in nature, will destroy an organization’s tax-exempt status regardless of the organization’s other charitable purposes or activities. Private benefit is defined in American Campaign Academy, 92 T.C. at 1069, as,

“nonincidental benefits conferred on disinterested persons [that] serve private interests.” Several cases go further discussing what constitutes a non-incidental benefit. In P.L.L. Scholarship, 82 T.C. 196, the court determined that an organization that primarily operated bingo in a bar, which was owned by related parties of the organization, provided a non-incidental benefit to the bar by bringing in clientele and otherwise promoting the bar. The organization in Church by Mail, 765 F.2d 1387, was found to provide a non-incidental private benefit to a for profit owned by the founders of the church since that church made up the entire market of the for profit organization. It was determined in this case that, “The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church.” Id. at 1392. Finally, in Postgraduate Medical Foundation, 56 T.C.M. (CCH) 1140, an organization was denied exemption because its program exclusively used a for profit travel agency owned by the founders of the organization without soliciting bids from other organizations. The travel agency and the petitioner also shared office space. The court determined that the organization was operated for the private benefit of the travel agency.

Here, you receive and distribute funds to exempt organization who have yet to claim a page on Company's website. Similar to the organization in P.L.L. Scholarship, 82 T.C. 196, that solely operated bingo in a restaurant owned by related parties, your activities, while consisting of distributing funds to exempt organizations, have a substantial purpose of driving business to Company's website. The critical inquiry not being the amount of any contractual payments, but whether the entire enterprise is carried on in a manner that the for profit benefits substantially from your operations. You are operated primarily as a conduit for the related for profit. This is particularly concerning when the board is a small group of entirely related individuals. Bubbling Well Church, 74 T.C. at 534. Your activities act as little more than an advertising and business development branch of Company. Your operations not only do not further an exempt purpose, but they are also for a substantial private benefit.

Conclusion

You are not operated exclusively for an exempt purpose. You provide a service for a fee and the fact that these services may be provided directly to tax exempt entities does not make such activity charitable. You also provide a substantial private benefit. You are not exempt under § 501(c)(3).

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send us a statement within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number

- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For an authorized representative:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. You also have a right to a conference after you submit your statement. If you want a conference, you must request it when you file your protest statement.

You can also ask the Office of Appeals to review your application for tax-exempt status. Your right to request Appeals review is in addition to your right to a conference, as outlined in Revenue Procedure (Rev. Proc.) 2014-4 and Rev. Proc. 2014-9. You must notify us in writing if you want us to forward your case to the Appeals Office. You can find more information about the process and the role of the Appeals Office in Section 7 of Rev. Proc. 2014-9 and Publication 4227, *Overview of the Appeals Process*.

If the person representing you in this process is not an officer, director, trustee, or other official who is authorized to sign for the organization, he or she must file Form 2848, as explained above, and otherwise meet the requirements in Publication 216, *Conference and Practice Requirements*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, any request for consideration by the Office of Appeals, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:2)
NCA - 557-09
1111 Constitution Ave, N.W.
Washington, DC 20224

Street address for delivery service:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:2)
NCA - 557-09
1111 Constitution Ave, N.W.
Washington, DC 20224

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Michael Seto
Manager, Exempt Organizations
Technical

Enclosure: Publication 892