



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201545028**
Release Date: 11/6/2015
UIL Code: 501.32-00

Date: August 12, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: June 12, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

LEGEND:

B =Name
N =Name
O =State
P = Date
T =Name

UIL:

501.32-00
501.32-01
501.33-00

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.

Issues

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

Facts

Prior to your formation, your founder and director, B, discovered a new development in current hydro energy technology for which he has a patent called the T system. The T System is used for a device that produces inexpensive electricity, which will successfully compete with other electric production to decrease costs to future consumers. These results will be disseminated to potential investors and the general public, to ensure furtherance of this green fuel efficiency mission. B also has a for profit limited liability company, N, involved in the research and the development of the T system. N is a commercial physical researcher. B formed you to attract investments to fund the research and development of the T system.

You were incorporated in the State of O on P. Your Articles of Incorporation state “The specific purpose for which this corporation is organized is: When an invention is completed and the devices are sold the resources will be used mainly to finance housing for homeless people.”

Your first function will be to complete the research necessary on the T technology to guarantee the satisfactory function of the devices. You will then locate sites and construct devices to produce energy on these sites. Once the volume of electricity produced is large enough, you will employ an establishment that is capable of distributing and selling the electricity. N has begun this and this consumes 100% of your time.

Your research on production of inexpensive electricity you hope will successfully compete with carbon fuels by replacing them at decreased costs to future consumers. These research results will be disseminated to potential investors, and the general public, to ensure furtherance of green fuel efficiency. At this time you have no intention to distribute a significant percentage of research results outside of the “parent organization” as you are in the infancy stage of development. B currently owns the patents and his heirs will inherit ownership of the patents in the future. Currently, there is no intention of charging fees for use of the patents; however, this is not ruled out entirely in the future. B is currently trying to obtain investments to make his dream of green energy efficiency a reality.

You submitted webpages for N which show N’s products include T technology. In describing your relationship with for-profit entities, you indicated that the for-profit entities will be advertised in all literature and marketing materials and that experts will be utilized to ensure there is no confusion between you and the for-profits. There will be a non-profit investment driven entity to fund further and large-scale research and a for-profit entity to produce the patented T on a massive basis and a sales team to market the devices to the general public. You may consider selling inventions to other entities but most will be first considered for use by N. N’s website states that donations can be made to you or N.

Your revenues will come from donations and sales of goods and services. Your expenses will include compensation, sales and marketing, research, occupancy, and other expenses. B will be compensated as president and manager.

You state once the T system is fully funded, it will result in a very large, profitable enterprise where employees and/or consultants will be paid adequate compensation. You plan to donate 10% or more of the profits to organizations that help the homeless.

Although you indicated on the Form 1023 that you have bylaws, you did not submit a copy with your application. You have adopted a conflict of interest policy. Your board is made up of B, two of his relatives, and a business associate who is unrelated.

Law

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax of corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization’s net earnings inures to the benefit of any private shareholder or individual.

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 limit its purposes to one or more exempt purposes;

and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

You do not meet the requirements in Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your Articles of Incorporation state . Because your purposes are not limited to those in the Code, you fail the organizational test.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). 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 Income tax 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(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection, 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)(5)(iii) of the regulations provides that scientific research will be regarded as in the public interest:

- a) If the results of such research (including any patents, copyrights, processes or formulas) resulting from such research are made available to the public on a nondiscriminatory basis;
- b) If such research is performed for the United States or any of its agencies or Instrumentalities or for a state or political subdivision thereof;
- c) If such research is directed toward benefiting the public.

Rev. Rul. 65-1, 1965-1 C.B. 226, The Service considered an organization, which promotes and fosters the development and design of machinery in connection with a commercial operation, and in connection therewith has the power to sell, assign, and grant licenses with respect to its copyrights, trademarks, trade names, or patent rights.

The Service concluded that the organization does not qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Revenue Ruling 69-632, 1969-1 C.B. 120, a nonprofit composed of members of a particular industry to develop new and improved uses of existing products of the industry is not exempt under section 501(c)(3) of the Code. The association's members select research projects in order to increase their sales by creating new uses and markets for their product. The primary purpose of the association's research is to serve the private interests of its creators, rather than the public interest.

In Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number of importance of truly exempt purposes. The petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

In *P.L.L. Scholarship v. Commissioner*, 82 T.C. 196 (1984), an organization which operated a bingo at a bar for the avowed purpose of raising money for scholarships was denied exception under section 501(c)(3) because it was operating for private interests. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. A realistic look at the operations of these two entities, however, shows that the activities of the organization and the bar were so interrelated as to be functionally inseparable.

In *Church by Mail, Inc. v. Commissioner*, 765 F.2d 1387 (9th Cir. 1985), cert. denied, 497 U.S. 1005 (1990), the court held that when a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

Application of law

You are not as described in section 501(c)(3) of the Code because you are not exclusively organized and operated for charitable purposes.

You are not as described in Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations because you fail both the organizational and operational tests.

You do not meet the requirements in Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your Articles of Incorporation state as your specific purpose: "When an invention is completed and the devices are sold, the resources will be used mainly to finance housing for homeless people". Because your purposes are not limited to those in the Code, you fail the organizational test.

You do not meet the provisions of Section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. You are operating to attract funding for the research and development of B's patented technology into devices to be marketed, distributed and sold. This serves a substantial private purpose.

As described in section 1.501(c)(3)-1(c)(2) of the Regulations, you are not operated exclusively for exempt purposes because your net earnings inure to the benefit of B. For example, you were formed to fund the research and development of marketable devices using B's patented technology which will be a product of N, B's for profit business. Moreover, the fact you have adopted a conflict of interest policy does not change the fact that the majority of your board consists of related parties and has a personal interest in you because they are in a position to profit from your activities.

You are not defined in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you are operating for the private interests of B and N. You are operating to confer the advantages of tax-exempt status to B as shown by the fact that your tax exemption will enable B to apply for grants to develop his inventions using his patented technology; these will be marketed and distributed through N. This demonstrates you are primarily serving private interests.

You do not meet the provisions of section 1.501(c)(3)-1(d)(5)(iii) of the Regulations. Any scientific research you are carrying on is not primarily conducted in the public interest. Your activities of funding the research and development of B's patented technology into marketable products serve the private interests of B, not the public.

You are like the organization in Revenue Ruling 65-1. Your activities of funding the research and development of B's ideas into products do not constitute "scientific research" within the meaning of section 1.501(c)(3)-1(d)(5) of the Regulations. In addition, your purpose of obtaining grant money to develop B's ideas is directed to benefit B and N and any public purpose is incidental.

You are comparable to the organization in Revenue Ruling 69-632 because you were formed to serve the private interests of your creator, B. Although your activities may result in new processes that benefit the public, this benefit does not overcome the benefit to B and N which violates the absolute inurement prohibition.

As held in *Better Business Bureau of Washington, D.C., Inc. v. United States*, a single non-exempt purpose, if substantial, will preclude tax exemption under section 501(c)(3) of the Code. Your activities result in substantial private benefit to B, and your earnings inure to the benefit of your officers. Like the organization described in the court case, this single, substantial nonexempt purpose destroys your claim to exemption under section 501(c)(3) of the Code.

You are also similar to the organization described in *P.L.L. Scholarship Fund*. You and N are controlled by the same individual, B. Your functions and management are so interrelated with N that you are functionally inseparable from N because you will be funding a product for N.

You are comparable to the organization in *Church by Mail* because you and N are controlled by the same person. Moreover, N benefits substantially from your operations.

Conclusion

Despite any charitable and educational purposes your activities may achieve, you cannot qualify for tax exemption because more than an insubstantial part of your activities is not in furtherance of exempt purposes.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

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 a statement to us 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 authorized representatives:

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. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

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, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

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

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Director, Exempt Organizations

Enclosure:
Publication 892