



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201044016**  
Release Date: 11/5/2010

Date: August 10, 2010

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-30

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,

Robert Choi  
Director, Exempt Organizations  
Rulings & 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: June 15, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =  
State =  
Date =  
R =  
S =  
T =  
B =  
C =  
D =  
E =  
Grantor X =  
Grantor Y =

Dear \_\_\_\_\_ :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue 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.

Facts:

The information you submitted indicates that you, M, were incorporated under the laws of State on Date.

Your Articles of Incorporation state that you were organized to "carry out charitable, scientific, literary or educational purposes, as such terms are defined for purposes of section 501(c)(3) of the" Code. Your articles also state that you were formed to encourage the public to engage in

charitable action through your website by providing means by which the public may donate funds or volunteer for charitable causes, make monetary grants to other charitable organizations, and develop open-source software and other technology that will be available free-of-charge to the public. Your application Form 1023 states that you will no longer engage in the last activity of developing open-source software and technology that will be made available to the public for free.

According to your application, you will provide services to the following three sectors:

- 1) **The general public** – offering individuals a way to take action on the issues that inspire them
- 2) **Nonprofits** – providing a tool to attract users, sustain involvement and increase long term funding by connecting Nonprofit needs to the news via a robust, issue centered social network
- 3) **News providers** – from a ‘What can I do?’ widget to a full blown white label portal, M allows news providers to connect with new users and more deeply engage existing ones

You state that percent of your financial resources and percent of your staff resources will be used on grant-making. You will spend the remaining percent of your financial resources and percent of your staff resources building a social networking website. Your social networking website will aggregate news articles (“Facts”) from online sources and then link them to a variety of related needs (“Acts”) of organizations exempt from taxation under section 501(c)(3) of the Code, as posted by the section 501(c)(3) organization. By combining “Facts” and “Acts” in one forum, you state that you will encourage the general public (“Users”) to contribute directly to section 501(c)(3) organizations by donating time, services, goods, or money. For example, you state that your website might link a story about a natural disaster with Acts such as seeking contributions of blankets, non-perishable food, or medical volunteers. You state that your “innovation is to engage [Users] at the moment of inspiration with opportunities for action that relate directly to the stories [they] are reading. [You] capitalize on the unique window of opportunity when [Users] are inspired to action.” You further state that through your “fresh approach to news aggregation and social change,” you believe that you, “will create new opportunities for active involvement, develop local communities for positive action and raise awareness of global issues.”

Your application states that you encourage non-profits to “post calls for funding, petition signing, letter writing, or even staffing” on your website. You will not charge any fees to organizations exempt under section 501(c)(3) of the Code, Users, or new agencies for your services. You plan to collect donations directly on your website, through a “PayPal donation system,” to be forwarded to participating section 501(c)(3) organizations. You projected that by the end of January 20 , you hoped to have compiled a database of at least 5,000 unique Acts and have signed up at least 500 section 501(c)(3) organizations. By July 20 , you hoped to have 5,000 participating section 501(c)(3) organizations and 100,000 registered Users. In the future, you would like to operate internationally by pairing Facts and Acts on a global scale. You also plan to offer monetary prizes of less than \$ to section 501(c)(3) organizations in the name of Users who, for example, complete the most “Acts” in a given time period.

You state that you will develop a “recommendation system” that will “weigh not-for-profit keywords against User interests and previous viewing histories, providing Users with

information that interests them each time they visit" your website. Users "will be encouraged to network with others who share similar interests or live close enough to allow physical action communities to develop in parallel with" your website. You promote the availability of your website to Users by posting on regular blogs, sites, and bulletin boards, as well as by having your directors attend conferences and send e-mail correspondence to interested persons.

In your application, you explain that you are not a news aggregator and are not creating news content but instead are "repackaging and reinterpreting how that content can be understood and applied." You state that you currently have no agreements in place with any entity to post news stories on your website. You state that you are different from other mainstream news' sites because you use "aggregated news articles in order to connect the public with opportunities related to news articles so that the public may engage in charitable activities." You state that you are providing a "one-stop solution for local, national and international news providers" struggling to "adapt to a changing landscape."

In August 20 , you hired a company to build and design the "alpha" version of your website. Funding for this contract came from a grant you received from Grantor X. You will apply for additional grants in the future.

You state that you "may" develop open-source software that fulfills "similar functions" as your website. For example, you state that you "will develop an educational version of the website to be used at high schools and universities." Illustrative of this type of service, you submitted an undated document entitled the R proposal, which you describe as an eight-month collaboration with a city school system and S to "design and implement an integrated curriculum around a fully functioning educational version of [your] interface and" an application programming interface (API) for use in schools. You also state that you have a partnership with T "to provide key metrics of success and detailed analysis for the project."

According to your application, you were formed by B, C, and D, each of whom serves on your board of directors and works for you on a part-time basis. B will serve as your Director of Operations, directing your day-to-day operations, strategic development, and fundraising. C will serve as your Online Director, in charge of your marketing and not-for-profit relationships. D will serve as your Technical Director and will direct your technical and new product development.

In the initial documents you filed with your Form 1023, you stated that you may establish a for-profit subsidiary to manage the income-generating aspects of your website. Your for-profit subsidiary would "generate revenue through discrete advertising and strategic partnerships," and it would pay dividends to you. You envisioned that these dividends, along with revenues from your fundraising activities, would finance your activities.

In response to requests for additional information, you submitted further documentation stating that your plans regarding your for-profit subsidiary had "evolved" since the filing of your initial application form. You stated that you initiated this change because individuals and entities were more interested in investing in a for-profit company than in making a donation to you. Also, you stated that customers were interested in receiving services from you on a fee basis. Your application states that your board of directors believes this new plan will maximize your revenue, all of which you state will be used for charitable purposes.

You state that your reconstituted for-profit subsidiary would license your complete technology, which includes your recommendation system, social networking tools, website design, and current database structure (“the repository for future information about service opportunities, members, not-for-profits”). In exchange for this license, the for-profit will pay royalties to you. Your application states that your for-profit will “pursue” any commercial application of intellectual property that you create.

You state that your for-profit subsidiary will offer business-to-business (“B-to-B”) services to non-profit organizations for a monthly fee ranging from \$        to \$        . You state that the for-profit would provide tailored software and support to non-profits by:

- Linking the non-profits’ activities to the daily news cycle;
- Reaching new audiences and soliciting more online donations;
- Providing visitors to a non-profit’s website with a “rich social networking tool that they can join and explore”; and
- Increasing the “reach of the non-profits’ online presence”

You state that your for-profit subsidiary will not license or receive information about your current or future “members” but will actively seek not-for-profit organizations for its services. The for-profit will not support users, non-profit organizations, or news organizations through your website. Instead, the for-profit will “provide the same opportunities for service for the public as [your] website, but within the clients’ own online news websites.” Using your technology, the for-profit will “build on and redesign [your] information architecture to apply it directly to the needs of the for-profit company’s clients.”

You state that the for-profit will also sell its “ability to match charitable actions and current events to news organizations such as CNN, UPI, the New York Times and others.” The for-profit will “develop and provide a white-label portal, widget and . . . API . . . for use by news providers to integrate [your] website technology into their own website and a marketing interface for use by select not-for-profit clients to further engage the general public.” In other parts of your application, e.g., your grant application to Grantor Y, you state that you would be developing this API. This API will allow a news organization to offer a list of service opportunities or nonprofit profiles that are “pulled from [your] database.” The news organization will then be able to “give visitors to its website an aggregated list of actions for charitable engagement that correspond directly to the content of news articles published on their website.” The for-profit will charge a service fee to news agencies of \$        to \$        per month, depending on the services the for-profit provides to the client.

You state that your for-profit subsidiary has not yet been formed. When it is formed, you expect to own approximately 1/3 of the equity. An additional 1/3 will be owned by your directors (including B and D) and employees (including E), and the remaining 1/3 will be owned by as-yet undisclosed investors. You state that you have been talking with some of your “key personnel, such as a software engineer and programmer, who will receive equity stakes in the for-profit company in lieu of initial payment.” With your equity ownership, you will hold 1/3 of the board of director seats of the for-profit. When the for-profit begins operating, D will be removed from your board of directors and staff and will move to the for-profit as its chief executive officer. B will continue to work for you and will also work for the for-profit company on a part-time basis as its Director of Business Development.

You state that you and your for-profit will have no common directors or volunteers. E will serve as your software engineer and as the chief programmer for your for-profit. You state that neither you nor the for-profit will play a role in the day-to-day operations of the other, and you will not share resources with the for-profit. The for-profit will provide you with revenue and any new social networking tools it develops free-of-charge.

You state that as your for-profit subsidiary will be "able to provide technological development, [M] will focus more on fundraising, grant making, and prize offerings." Regarding how your activities differ from your for-profit's activities, you stated, "The for-profit will charge for its services, providing opportunities for service on news-provider websites to the general public. [M] will not offer services or receive fees." In response to our request that you explain in detail what exempt activities you will engage in once the for-profit begins operations, you stated you will continue all of your "exempt purposes after the for-profit begins operation," with no further elaboration.

In your grant application to Grantor Y, you state that the combination of your "free social network with revenue-based B-to-B services – highly tailored services for news and non-profit organizations – creates a mutually enforcing cycle of content creation and user activity." [emphasis added]. You also state that you have "begun development of a suite of commercial products that will enhance the ability of news organizations and non-profits to connect with new users and more deeply engage existing ones." [emphasis added]. These tools, you state, will help nonprofits and news providers to raise funds, market, create communities, and energize their bases. You also state that you are "in discussion with several major news and non-profit organizations to provide these services" and that while you offer free services to individuals and non-profit organizations, you "will slowly shift to a self-sustaining revenue model." [emphasis added].

You provided copies of all your corporate and board meeting minutes from formation to date, including copies of all amendments and board resolutions. You submitted copies of minutes for a meeting on July , 20 ; August , 20 ; and July , 20 . You also submitted a copy of a "Unanimous Written Consent In Lieu of the First Meeting of the Board of Directors." B was authorized to open a bank account for you and was designated as the sole signatory on the account. Your July , 20 , minutes state that, based on comparable salaries, B and C authorized the payment of a \$ monthly salary to D until November 20 .

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, or educational purposes.

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

accomplish one or more of the 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(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. To meet the requirements 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.

Rev. Rul. 67-149, 1967-1 C.B. 133, discusses an organization that was formed for the purpose of providing financial support to several different types of organizations that are exempt under section 501(c)(3) of the Code. The organization carried on no operations other than to receive contributions and incidental investment income and to make distributions to such organizations at periodic intervals. The organization did not accumulate its investment income. The organization was held to be exempt under section 501(c)(3).

Rev. Rul. 72-369, 1972-2 C.B. 245, holds that an organization will satisfy the operational test only if its resources are devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the U.S. Supreme Court held that if an organization has a single non-exempt purpose and that purpose is substantial in nature, the organization will not qualify for exempt status.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court held that an organization that sold consulting services to nonprofit or exempt organizations for a fee set at recouping the organization's costs and realizing a profit is not exempt from taxation under section 501(c)(3) of the Code, because the facts indicate that the organization was not operated exclusively for exempt purposes. The court explained that the purposes toward which an organization's activities are directed, rather than the nature of those activities, is ultimately determinative of whether the organization is exempt under section 501(c)(3). The court explained that even if an organization is engaged in only one activity, as this organization was, it may carry out that activity for both exempt and non-exempt purposes. The critical inquiry, the court explained, is whether the organization's primary purpose for engaging in the activity is an exempt or a non-exempt purpose, which is a question of fact. Relevant factors include the manner in which the organization conducts the activities, the commercial hue of those activities, and the existence and amount of annual or accumulated profits.

In Church By Mail Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), the court examined an organization that engaged primarily in preparing, printing, and mailing religious messages. The two ministers who ran the organization also owned an advertising agency that provided printing and mailing services to the organization. The court concluded that the organization operated for the non-exempt purpose of providing a market for the services of the advertising agency. The court explained that the critical inquiry in determining whether an organization's primary purpose is exempt or non-exempt is "whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially" from the non-profit's operation. The court found here that the organization was operated for the non-exempt purpose of providing a market for

the advertising agency, adding that the two ministers' dual control of both organizations enabled them to profit from the two entities' affiliation.

In Int'l Postgraduate Med. Found. v. Commissioner, 56 T.C.M. (CCH) 1140 (1989), the court ruled as non-exempt under section 501(c)(3) of the Code an organization formed to sponsor medical seminars and symposia that was founded and run by an individual who was a shareholder and officer in a for-profit travel agency that provided travel arrangement services to the non-profit. Finding that the non-profit was formed to obtain customers for the for-profit's business, the court concluded that the non-profit had, as a substantial purpose, increasing the for-profit's income. When a for-profit organization benefits substantially from the manner in which the activities of a related non-profit organization are carried on, the court reasoned, the non-profit organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if the non-profit furthers other exempt purposes.

In Church of Spiritual Technology v. United States, 26 Cl. Ct. 713 (1992), the court examined an organization formed to serve as an archive for preserving the writings of the Christian Scientology religion. The organization was connected with, and arose from a reorganization of the administrative structure of, that religion. The court addressed the issue of whether archiving was the organization's primary purpose, concluding that it was not and that the organization was formed primarily for tax-planning purposes. The court explained that an organization can have a tax-exempt purpose or activity, but that does not mean that it does not also have a non-exempt purpose or activity. In reaching its conclusion, the court examined the intricate relationship the organization had with other entities involved in Scientology's administration. This court emphasized that the Supreme Court has cautioned against a court's uncritical reliance on form as opposed to function, adding that section 501(c)(3) of the Code contemplates that the Internal Revenue Service will inquire into the reality of an organization. Where there is in fact no meaningful separation between entities in question, the court stated, the connections between related entities can at a minimum be considered to determine whether they affect the merits of the application for exemption, as the court concluded they did in this case.

In Westward Ho v. Commissioner, 63 T.C.M. (CCH) 2617 (1992), the court ruled as non-exempt under section 501(c)(3) of the Code an organization formed to provide free transportation to other locations for homeless individuals who frequented areas at which the organization's founders operated restaurants. The court concluded that the organization failed the operational test of section 501(c)(3) because it operated to serve the private interests of its founders "more than incidentally." In reaching this conclusion, the court examined both the actual, as well as the stated, purposes for the organization's existence. To be considered as operating "exclusively" for exempt purposes, the court stated that the term "exclusively" does not mean "solely" or "absolutely without exception." Rather, the presence of a single nonexempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The organization must not be organized or operated for the benefit of private interests, and the relevant question is whether the benefits flowing to private persons are incidental to the main purpose of the organization or are more than incidental.

In KJ's Fund Raisers, Inc. v. Commissioner, 74 T.C.M. (CCH) 669 (1997), aff'd by unpublished opinion, 166 F.3d 1200 (2d Cir. Oct. 27, 1998), the court examined an organization formed to raise funds for distribution to charitable causes and whose primary activity consisted of selling lottery tickets during regular business hours at a lounge owned by the founders of the organization. The court ruled that the organization was not operated exclusively for exempt

purposes under section 501(c)(3) of the Code. The court explained that even an organization engaged in only one activity may have multiple purposes for that activity, adding that a single nonexempt purpose, if substantial in nature, will disqualify an organization from exemption under section 501(c)(3). The court stated that this determination is factual and involves examining both the actual and stated purposes of the organization's existence, as well as the activities it engages in to accomplish those purposes. The court concluded that the organization here engaged in the exempt activity of raising money for charitable purpose, but it also operated for the private benefit of the lounge and its owners. The lounge received a significant benefit, the court explained, through the publicity it would otherwise not have received but for its exclusive association with the organization.

Analysis:

To be exempt under section 501(c)(3) of the Code, an organization must meet both an organizational and an operational test. Section 1.501(c)(3)-1(a)(1) of the regulations. Our analysis of the information you submitted shows that while you meet the organization test you do not satisfy the operational test because you have not established that you are or will be operated exclusively for an exempt purpose. Instead, the administrative record demonstrates that you will operate for the more than insubstantial non-exempt purpose of benefitting your proposed for-profit subsidiary.

Under the operational test of section 501(c)(3) of the Code, you must be operated "exclusively" for one or more exempt purposes. Section 1.501(c)(3)-1(a)(1) of the regulations. The term "exclusively" has not been construed to mean "solely" or "absolutely without exception." Westward Ho, 63 T.C.M. at 2620. However, an organization will not be regarded as operating "exclusively" for one or more exempt purposes if more than an "insubstantial part" of its activities is not in furtherance of an exempt purpose. Section 1.503(c)(3)-1(c)(1) of the regulations. It is not the nature of the activities that an organization engages in that is ultimately dispositive, but instead it is the purpose towards which the organization's activities are directed. B.S.W. Group, 70 T.C. at 356. The mere fact that an organization has a tax-exempt purpose does not mean that it does not also have a purpose that is non-exempt. Church of Spiritual Technology, 28 Cl. Ct. at 730. The presence of a single, non-exempt purpose, if more than insubstantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Better Bus. Bureau, 326 U.S. at 283, and Westward Ho, 63 T.C.M. at 2620. Whether an organization has as its primary purpose an exempt or non-exempt purpose is a question of fact to be resolved on the basis of all the evidence presented. B.S.W Group, 70 T.C. at 358. Factors that are significant include the manner in which an organization's activities are conducted and the commercial hue of those activities. Id.

In analyzing whether you are tax-exempt, we must be concerned with both your actual, as well as your stated, purposes. Westward Ho 63 T.C.M. at 2620 (citing Christian Manner Int'l v. Commissioner, 71 T.C. 661 (1979)). Section 501(c)(3) of the Code contemplates that we will inquire into the reality of an organization, Church of Spiritual Technology, 28 Cl. Ct. at 733. The U.S. Supreme Court has cautioned against the uncritical reliance on form as opposed to function. Id. (quoting Helvering v. Commissioner, 293 U.S. 465 (1935)). Your Articles of Incorporation state that you were organized to carry out charitable, scientific, literary, or educational purposes. Your actual activities consist of aggregating news articles from online sources through your website and then linking them to a variety of needs posted by

organizations exempt under section 501(c)(3) of the Code. "Users" can then contribute directly to these organizations by donating time, services, goods, or money. Because you indicate only that you "may" engage in other activities (e.g., grant-making, developing educational software, and awarding prizes), given that you will expend 97 percent of your financial resources and 90 percent of your staff resources on your social networking website, your website activity is the primary activity that you engage in. You state that you engage in these activities for the purpose of encouraging the general public to contribute directly to section 501(c)(3) organizations. We conclude that while you have a stated exempt purpose, you also operate for the non-exempt purpose of benefitting your proposed for-profit subsidiary and that purpose is more than insubstantial in nature.

First, in examining the reality of your organization, it is difficult to distinguish between your activities and the activities of your proposed for-profit subsidiary. Where there is, in fact, no meaningful separation between entities in question, the connections between the organizations can at a minimum be considered to see if they bear on the merits of the application for exemption. Church of Spiritual Technology, 28 Cl. Ct. at 730. Your proposed for-profit will license your complete technology, which will include your recommendation system, social networking tools, website design, and current database structure. It would then build on and redesign your information architecture to provide B-to-B services to non-profits and news organizations for a monthly fee. In response to our question of how your activities differ from those of your for-profit, you replied that the for-profit "will charge for its services, providing opportunities for service on news-provider websites to the general public," adding that you would not offer services or receive fees. In response to our request that you explain in detail what exempt activities you will engage in once the for-profit begins operations, you stated, without elaboration, that you will continue all of your "exempt purposes after the for-profit begins operation."

Thus, in reality, it appears that both you and your for-profit subsidiary will assist non-profit organizations and news organizations and connect them both to the general public, while using your technology. While your for-profit may also provide additional services (e.g., B-to-B services), there is little meaningful separation between the activities you and your for-profit subsidiary will engage in. In fact, in several places throughout your application, you refer to yourself and your for-profit subsidiary interchangeably. For example, your grant application to Grantor Y discusses your free social network and your revenue-based B-to-B services, although you have indicated that your for-profit subsidiary will be engaged in conducting revenue-based B-to-B services. In some places you state that you are developing some technology, e.g., the API, while in other places you state that the for-profit subsidiary is. You have also presented yourself and your for-profit subsidiary to the public without distinguishing between yourself and any proposed for-profit.

Further, a comprehensive review of the facts indicates that your for-profit subsidiary will benefit substantially from your operations, which is not allowed under section 501(c)(3) of the Code. See, Church By Mail, 765 F.2d at 1392, and Int'l Postgraduate Med. 56 T.C.M. at 1143. You state that once your subsidiary "is able to provide technological development," you will begin focusing more on fundraising, grant making, and prize offerings. In fact, you state that your subsidiary will "pursue" any commercial application of the intellectual property that you create. There is no evidence within your application that your for-profit subsidiary will pay you a fair market price for the license to use your technology, and while your subsidiary will pay you yearly dividends, there is no evidence that the amount of these dividends will reflect the fair market

value of this license or your interest in the subsidiary. While you state that your for-profit will not receive information about your current or future members, it is possible that at least some of the non-profit organizations (and news organizations) seeking help through you would also have an interest in purchasing the services offered by your for-profit subsidiary. You have, in fact, indicated that one of the reasons you plan to form the subsidiary is because some non-profits and news agencies were interested in receiving services from you on a fee basis. In all, it is likely that your activities will steer non-profit organizations and news agencies to your for-profit subsidiary for services. Given all these facts, we cannot conclude that your activities will not promote the business activities of your for-profit,

Similar to the organizations in KJ's Fund Raisers, 74 T.C.M. (CCH) 669 and Int'l Postgraduate Med., 56 T.C.M. (CCH) 1140, the facts also illustrate that there is in reality little, if any, independence between you and your for-profit subsidiary and that one of your purposes is to further the financial interest of not just your subsidiary but also your directors and employees. You state that you and your for-profit will have no common directors or volunteers, but you do not specifically state that you will not have any common employees. In fact, it appears that E and B will work for both you and the for-profit and B will continue on your board of directors. You will own 1/3 of the for-profit's stock, and your employees and directors will own up to another 1/3. In all, you will have directors and employees who will financially benefit from the activities of your for-profit subsidiary. It appears that your for-profit will also have sufficient control over your activities, through common employees and directors, to ensure that your activities are used for its advantage. Also, your board minutes do not discuss the creation of a for-profit subsidiary or whether entering into this arrangement and granting this license to the subsidiary are in your best interest. While you indicate that you have a conflict of interest policy, there is no indication that your board followed this policy in discussing the formation of this for-profit in this manner. There appears to have been no board of disinterested persons making these decisions for you. In all, these facts illustrate a lack of independence between you and your for-profit subsidiary.

Moreover, you have failed to show that you will operate for the benefit of public, rather than private, interests, as required under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Organizations exempt under section 501(c)(3) of the Code must not be organized or operated for designated individuals such as the creator or his family, shareholders of the organizations, or persons controlled, directly or indirectly, by such private interests. Reg. section 1.501(c)(3)-1(d)(1)(ii). As discussed above, you will have directors and employees who will financially benefit from the activities of your for-profit subsidiary. Similar to the organization in KJ's Fund Raisers, 74 T.C.M. (CCH) 669, your for-profit will also have sufficient control over your activities, through common employees and directors, to ensure that your activities are used for its advantage. Because your directors, employees, and for-profit subsidiary will financially benefit from your organization, we conclude that you do not operate solely for a public purpose.

Moreover, you have also not shown that your activities and purposes are inherently exempt within the meaning of section 501(c)(3) of the Code. To be exempt under section 501(c)(3), your resources must be devoted to purposes that qualify as exclusively exempt within the meaning of that section. Rev. Rul. 72-369, supra. Rev. Rul. 67-149, supra, holds that an organization may qualify for exemption under section 501(c)(3) if it is formed to provide financial assistance to other section 501(c)(3) organizations. However, the organization in this ruling is distinguishable from you because your website activity is your primary activity.

Rev. Rul. 67-149, supra, speaks of an organization that “carries on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations.” In contrast, you do more than simply receive contributions and forward these contributions to exempt organizations. Instead, you operate a portal website that links news organizations with users and organizations exempt under section 501(c)(3) of the Code. While your services are directed toward section 501(c)(3) organizations and users, they are also directed towards news organizations. You state that you do not create news content, instead you “repackage” and “reinterpret” that content. In providing services to news providers, you state that you allow them to connect with new users and more deeply engage existing ones. You state that you are providing a “one-stop solution for local, national and international news providers” struggling to “adapt to a changing landscape.” You stated that your activities differ from mainstream news providers because you aggregate news to connect the public with volunteer opportunities; however you failed to provide information demonstrating that those activities are inherently exempt. In addition, you have a for-profit subsidiary that carries on activities very similar to your own activities and that uses your technology. Your activities clearly go beyond those of the organization in Rev. Rul. 67-149.

Based on the facts presented, an examination of your proposed operations, and the manner in which you and your for-profit subsidiary will conduct your activities, we conclude that you are operated for more than an insubstantial non-exempt purpose.

Conclusion:

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(3) of the Code and you must file federal income tax returns.

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.

Your protest statement should be accompanied by the following declaration:

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

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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](http://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 IRS will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code 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.

Send your protest statement, Form 2848, and any supporting documents to this address:

You may also 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, contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements

cc: