



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201311033**
Release Date: 3/15/2013
Date: December 18, 2012
UIL Code: 501.32-00
501.32-01
501.33-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

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

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

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

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

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

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 1, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
E = State
F = Board Member
G = Board Member
H = Board Member
J = Board Member
M = For-Profit Company

s = dollar amount
t = dollar amount
v = dollar amount

UIL:

501.32-00
501-32-01
501.33-00

Dear

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

Issues

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

Facts

You were incorporated on B under E law. Your Articles of Incorporation state, in Article II, that your specific purpose is: "To enhance the financial education of Children and Adults. And to provide financial assistance to children and adults in need of food, shelter, and clothing."

Article VI of your Articles of Incorporation states: "Disposition of assets upon dissolution of corporation will be contributed to a worthy nonprofit at the discretion of F."

You have not adopted bylaws.

You have four board members (directors) who are all related. F is your president and is married to G. H is the mother of F, and J is F's sister. F is a financial professional, G is an insurance claims assistant and H and J are auto workers. J is also a musical performer who will conduct fundraising concerts for you.

F will receive base compensation of s. He will also receive incentive pay at 25% of gross revenues from investment gains, donations, grants and other fundraising activities. F's total compensation is capped at v.

The other three board members will also be compensated. You do not plan to have any employees other than the four board members. Your board members will perform appointed tasks and will be compensated for being on the board and performing services and functions as required.

M is a for-profit entity owned by F. M engages in manufacturing, sale and distribution of various products, financial consulting, financial services, process improvement and entertainment production and management.

You will buy novelty items (t-shirts, mugs, key chains, etc...) from M at fair market pricing (defined as the market price for materials and services with a mark-up by M not to exceed %). Also, you plan to hire F and M as independent contractors to instruct and present seminars, consult, train, solicit funds, conduct raffles and provide investment advice.

Your planned activities include conducting seminars, workshops, and classes to educate children and adults on personal finance and providing financial assistance to children and adults in need of food, shelter and clothing. You estimate you will spend % of your time raising funds, % conducting workshops and % providing donations.

You will limit your need based financial assistance to t increments. Financial assistance recipients are required to attend your financial seminars. Recipients that refuse to attend your seminars will not receive any future support.

You will obtain clients via public service announcements, advertising, e-mail blasts, radio announcements and other public advertising. You will primarily target families making % or less of poverty level income per federal guidelines. You will also target seniors (aged 60 and older) making % or less of poverty level.

All financial education will be conducted in a group setting. You will not charge any fees for your services. The free financial education will include budgeting, saving, understanding interest rates, compound interest, foreclosures, mortgages and investing.

Most of your programs and services will be handled by independent contractors, including F and M. You will enter into joint ventures with for-profit entities, on a project basis, to raise funds, create economies of scale or if it makes good business sense. For example, F or M will invest funds into stocks and options on your behalf.

You plan to own or purchase license rights for copyrights, patents or trademarks. Fees may be charged for the use of the properties and revenue may be collected by you as part of the sale or use of intellectual properties. The items may be produced by F or M.

You do not have a facility. You will conduct your seminars and other services at churches and other public facilities.

You submitted budgets for the next three years that indicate the following sources of revenue: contributions, investment income, raffle revenue and the sale of merchandise. Your projected expenses include fundraising, donations, incentive pay for F, officer compensation and other expenses. Fundraising expenses primarily consist of artist fees and facility rental.

Law

Section 501(a) of the Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

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

Section 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:

- (A) The organization--
- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
 - (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
 - (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which--
- (i) requires that any fees charged to a consumer for services are reasonable,
 - (ii) allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.
- (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).

- (F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

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(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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

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

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

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that 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.

In Rev. Rul. 61-170, 1961-2 C.B. 112, an association composed of professional private duty nurses supported and operated a nurses' registry to help make the nurses' services more readily available to the general public. The association's bylaws stated that its specific purposes were to provide employment for its members as well as to organize an adequate and available nursing placement service for the community. Its membership was open to both registered and practical nurses who met specified requirements. The organization maintained a registry of its members showing their respective qualifications and the types of services they perform. Reference and placement from the register were made on a rotating basis upon request for nursing services. The association was operated primarily to afford greater employment opportunities for its members, and only incidentally for the benefit of the general public. This was evidenced by the fact that it drew its support primarily from members and was controlled by a board of trustees composed of professional nurses, without public participation of any kind. Thus, the association was not organized or operated exclusively for exempt purposes as described in section 501(c)(3) of the Code.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support. The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use

of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

In Church by Mail, 765 F. 2d 1387 (9th Cir. 1985), affg. TCM 1984-349, Tax Court concluded that the extent of the integration between the operations of a non-profit entity and related for-profit entities controlled by the non-profit directors precluded exemption. Furthermore, the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9th Circuit Court of Appeals, in affirming the Tax Court's decision, stated 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".

Application of Tax Law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1) of the regulations. Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Organizational Test

To satisfy the organizational test, an organization must have a valid purpose clause and ensure that assets are dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law. 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the regulations.

A valid purpose clause limits the organization's purposes to one or more exempt purposes and does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes. Your Articles do not limit your purposes to one or more exempt purposes.

An organization's assets must be dedicated to an exempt purpose. Your articles do not ensure that upon dissolution assets will be dedicated to an exempt purpose.

Operational Test

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish that you are operated exclusively for one or more exempt purposes.

Inurement

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 501(c)(3) of the Code; Section 1.501(c)(3)-1(c)(2) of the regulations.

You confer a direct benefit on your director, F, who owns M. You will subcontract most of your workshops to M. Also, you will purchase items from M at % above their wholesale cost to use in your fundraising operations.

You will pay F % of gross revenues from investment gains, donations, grants and other fundraising activities. This payment to F is non-fixed compensation based on business results. While F's compensation will be capped at v you provided no evidence that v was reasonable.

Your relationship with M and the payment of non-fixed compensation to F allows your net earnings inure to the benefit of your director. Therefore, you are not operated exclusively for one or more exempt purposes as described in section 501(c)(3) of the Code.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

It is unnecessary for us to determine that your payments to the related for-profit entity M are unreasonable. Church by Mail, *supra*. Your entire enterprise is carried on in such a manner as to substantially benefit the related for-profit entity.

You are controlled by a board of directors composed of related individuals, without public participation of any kind. All four members receive compensation and are related to F, who is the owner of M. Members of your board of directors as well as related for-profit M will also be hired as independent contractors. These factors and the manner in which you operate suggest that you are operated for the benefit of your individual board members rather than the public, as in Rev. Rul. 61-170, *supra*.

Your board of directors is composed entirely of persons who stand to gain financially from your organization's activities, unlike the organization in Rev. Rul. 69-441, *supra*, whose board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

Therefore, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii).

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, even if you had established that you meet the organizational and operational tests, you would also have to comply with the provisions of section 501(q). You do not comply with certain provisions of section 501(q) of the Code.

You are governed by a four person related board that will receive compensation. Credit counseling organizations must be governed by a board controlled by persons representing the broad interests of the public rather than by persons who benefit from the organization's activities. Section 501(q)(1)(D). Accordingly, you do not have a board of directors that is controlled by persons who represent the broad interests of the public as required by section 501(q)(1)(D)(i).

You also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percentage of voting power that is allowed to be vested in financially interested persons. Since your entire board is related and compensated, 100% of your voting power is vested in financially interested persons.

Therefore, had you otherwise met 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).

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes. You do not pass the organizational test because your Articles of Incorporation do not limit your purposes to one or more exempt purposes and you do not ensure that your assets are dedicated to an exempt purpose. Likewise, you do not pass the operational test because your net earnings inure to the benefit of private shareholders or individuals. Therefore, you have not established that your operations serve a public rather than a private interest. Even if these two tests were met, you still would not qualify for exemption under section 501(c)(3) because you do not meet the requirements of section 501(q).

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

Appeal Rights

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the

date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

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

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

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the

organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

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

Deliver to:

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

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O Paz
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892