

Internal Revenue Service
Appeals Office

Department of the Treasury

Release Number: 201327016
Release Date: 7/5/2013
Date: April 10, 2013

Taxpayer Identification
Number:

Person to Contact:

Tel: ****
Fax: ****

Tax Period(s) Ended:

Certified Mail

UIL Numbers: 0501.03-30,
501.33-00, 501.36-01

Dear ****:

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in section 501(c)(3) of the Code.

Our adverse determination was made for the following reasons:

In order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be operated exclusively for one or more of the purposes specified in such section. You have not established that you are operated exclusively for exempt purposes described in section 501(c)(3) of the Code.

Your **** program is not conducted in a charitable manner and serves the private interests of the business owners. You do not define "needy" or retain financial documentation from individuals seeking grants. You do not have any written policies, procedures or records demonstrating that grants and/or loans are made in an objective and charitable manner. You provided no substantiation for use of funds or evidence of verification procedures. Your **** and the manner in which they are conducted are not distinguishable from a for-profit **** firm.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms **** for the tax period stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

/s/
Appeals Team Manager

Enclosure: Publication 892

cc: ****



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = Officer
C = Officer
D = Officer
M = State
x = Date

UIL Numbers:

501.03-00
501.03-05
501.03-30
501.33-00
501.36-01

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. This letter supersedes our proposed adverse determination letter issued May 18, 2011 and considers your protest.

Issues

1. Does your business loan program constitute a non-exempt purpose, causing you to fail the operational test? Yes, for the reasons described below.
2. Do the payments you make to for-profit businesses as an incentive to hire individuals that you deem employable constitute substantial private benefit to those businesses, resulting in your disqualification from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
3. Do your recruiting activities constitute a non-exempt commercial purpose, causing you to fail the operational test under Section 501(c)(3) of the Code? Yes, for the reasons described below.

4. Have you established that the persons receiving or benefiting from your grant distributions are in fact needy or otherwise deserving objects of charity? No, for the reasons described below.

Facts

You were incorporated pursuant to the Non-Profit Corporation Law of the State of M on date x by individuals B, C and D. Your articles indicate you were formed, in part, to receive and administer funds exclusively for charitable, or religious purposes, either directly or by contributions to organizations duly authorized to carry on charitable, religious or educational activities, with the principal activity being to provide assistance and support services for persons affected by the economic downturn and who are unable to meet their basic needs. This support includes:

- a. providing loans to be repaid upon the improvements of the family's financial state;
- b. to help the unemployed find employment;
- c. to provide grants to allow such persons who cannot meet their basic living needs to sustain themselves, and;
- d. to provide whatever further support may be needed to help such persons that are affected by the economic downturn and cannot meet their basic living needs.

To date you have not adopted bylaws or provided a detailed description of your operational or decision making procedures. Your board members/officers are individuals B, C and D. Your original application did not include any current or planned expenditure for compensation.

You provided a narrative description of your activities with your initial application for exemption. You explained that you were created in the current economic climate to assist those families that are in dire financial straits by providing much needed financial assistance either directly or through other organizations that have similar goals. You said you will provide loans, help find employment, provide grants and further support to individuals who cannot financially meet the most basic of living expenses. You said you also intend to help persons train for other needed job skills where appropriate. You submitted a sample of the applications you have received from individuals seeking grants. Other than a recommendation by a Rabbi, you described no specific criteria for eligibility, no selection process, no record keeping procedures and no substantiation of use of funds. The Rabbi completes the application form and describes the family situation in general terms such as "terrible," "very stressful," etc.

Your revenue is projected to consist solely of gifts, grants and contributions of \$/ per year. You project to expend approximately % of your revenue annually for contributions and grants paid.

You received a \$ grant from C's private foundation a month before you were legally formed. You later submitted bank statements showing your bank account was not opened until a month after you were legally formed. We asked about this discrepancy. You said individual C actually donated \$ another organization with an assumed name very similar to yours. Your bank statements showed many large deposits from this other organization.

You submitted a listing of grant distributions you made to individuals from March through November during your first year of operations. Those grants totaled over \$/ for that specific period of time. You indicated " grants are only provided to individuals who have provided personal financial documentation demonstrating their inability to meet basic financial obligations to provide for their families or via a personal referral by an individual who has such knowledge." You stated that you maintain control over the funds and only distribute the amount on an as needed basis. You provided a copy of an application request form completed and submitted by a Rabbi asking for matching funds to support a particular individual. Despite these claims you did not have any written policies, procedures or records on the selection of recipients including relatives. You did not retain any financial documents on recipients, instead you state you return the documents to the individuals. Even though you stated you will seek a refund of misused funds you provided no evidence you verified the use of the funds granted. Also, when asked whether you require any documentation from the recipients of your grants, you stated that no documentation was required. The list you provided included, in a few instances, only last names. Copies of cancelled checks reflected some disbursements to individuals bearing the same last name as one of your officers. You submitted hard copy prints from your website. Your website included a variation of your name that you had not previously disclosed. The website used the word "Networking" as an integral part of your name. Your website included, in part, the following statements:

- Business Owners & Managers: We will be your recruiter at a reduced fee. We will only send you candidates for interview that we pre-qualified for the job.
- Experienced Professionals: Are you a professional without a job? To submit a resume to our recruiters click here.
- Starting or Buying a Business: Loans of up to \$. Click here for an online application.

- Job Referral: Tell us about an opening in your company or elsewhere.

Your website goes on to state that you have a team of professional recruiters to help with "interviewing and networking skills, video taped interviews and most important, job placement." You say you work with recruiters to help place your applicants on a regular basis. You said you actively receive job referrals leading to permanent employment, monetarily rewarding the referring person. In addition you said you direct your applicants to various community, federal, city and state programs.

You submitted a copy of an Internal Report to the Board of Directors. As a part of this report you said you have placed 34 people in various industries including high-tech, clothing sales, etc. You said you were challenged not only in finding the jobs that are available, but also by being able to find the appropriate employee match for the respective position. You said you have approximately 8 – 10 people interviewing with one of your headhunters each day and on any given day you have 3 – 5 headhunters working together and sharing people and job opportunities. You said the recruiters meet in the "war room" every day to discuss the jobs and match applicants to them. You also opened a second office to address the low-end jobs for people outside of the professional area.

We asked for you to explain the statement on your website that says you will be a "recruiter at a reduced fee." We inquired about this fee and you said there is not a formal fee schedule. You said you request of every company a donation of 10% of the first year's salary to allow you to continue to provide the services they benefitted from. You asserted that to date only a few companies have been forthcoming with a donation. You say as a "charitable organization, we are not a reduced-fee recruiter." You further asserted the ambiguity on your website would be corrected. To date, this has not been corrected.

Your website also included reference to an individual you called your Executive Director. This was your first mention of this individual. You wrote a large check, almost \$, to your Executive Director, as well as monthly reimbursements for what you purport are customary expenses, such as cell phone and parking. We asked how you determined the amount of the large disbursement to him and you said "the dollar amount was a salary disbursement after not having been paid for an extended period of time." You said this "postponement of pay had been previously agreed upon" by your Executive Director because funds were not available and cash flow was a problem.

In one particular month you made seven distributions which totaled over \$ to an organization. The nature of this organization is not known. You said these were "commission checks for having placed people in jobs." You said "each of these checks represents commissions for either individual or multiple job placements."

You indicated that you make loans, up to \$ _____, for individuals to start or buy a business. You submitted a copy of a cleared check in the amount of \$ _____ written directly to a business that was already in existence, not to an individual. You confirmed that this was a business loan. You state that the loans are given to qualified borrowers to start a business or jump start a failed business and it is for indigent people seeking to attain relief of their indigent state. Again, despite these claims you do not have any evaluative criteria, no application forms for the loans, no written policies, procedures or records showing your review and consideration of the loan. You also provided no evidence that the recipient was needy or the making of the loan furthered an exempt purpose.

Although your proposed budgets included no expenditures for salaries, your bank statements showed you were paying individuals, including an executive director. We inquired and found that not only did you have paid employees, but much like a staffing firm, you also were filing Form 941 for the individuals you "placed" with employers.

Your bank statements also included a \$ _____ payment to a staffing company. When we inquired as to the nature of this payment, you explained this staffing company placed five unemployed individuals that came to you seeking a job. You said you "pay fees to a number of companies for this service." You further asserted "in an economic environment such as we have today, almost no companies are paying placement fees, and if they are paying a reduced rate for high level positions they are not paying for the lower and mid level jobs, since so many job seekers are available."

In an attempt to clarify your activities and position, we held a conference call. During that call, the details of which were summarized in a letter to you dated October 5, 20____, you said you have interviewed 1900 people and they are currently in your database waiting for a job. You find the individuals and then the recruiter finds them a job. Then the recruiter is paid by you for placing the person. You said the recruiters get a percentage of the salary of the person placed. The individuals you have placed are lower salaried people (50k and below), and that your recruiters are on the payroll.

Law

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the regulations states 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(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 which 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(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of government.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3), even though its net profits do not inure to the benefit of individual members of the organization.

Rev. Rul. 56-304, 1956-2 C.B. 306 states that an organization which otherwise meets the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 61-87, 1961-1 C.B. 191, (1961), holds that an organization whose primary purpose and activity is to extend unsecured loans to needy students, at a comparatively low rate of interest to enable them to finance their education, is exempt from Federal income tax under section 501(a) of the Code as a charitable and educational organization described in section 501(c)(3) of the Code.

Rev. Rul. 63-220, 1963-2 C.B. 208, (1963), amplifies Rev. Rul. 61-87 and describes a corporation was organized primarily for the purpose of extending loans to needy students of a college to enable them to complete their educational programs. Certain loans are granted on an unsecured basis, while others require a type of security. Both types of loans are made at the same nominal rate of interest which is substantially lower than commercial interest rates, thereby representing a substantial saving to the students. Held, the organization qualifies for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code as one which is organized and operated exclusively for charitable and educational purposes.

Rev. Rul. 64-274, 1964-2 C.B. 141, (1964), describes a corporation which is organized and operated on a nonprofit basis. It provides worthy and needy students with free housing facilities and with funds for the purchase of books and instructional supplies or equipment on a gift, or loan basis, without interest. Accordingly, it is held that the corporation is exempt from Federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code, since it has been shown that it is organized and operated exclusively for charitable purposes.

Rev. Rul. 69-441, 1969-2 C.B. 115, (1969), describes an organization that was formed to help reduce the incidence of personal bankruptcy by informing the public on personal money management and by assisting low-income individuals and families who have financial problems. The organization provides information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. 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 is relieving the poor and distressed. Accordingly, the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 74-587, 1974-2 C.B. 162, (1974), provides that a nonprofit organization formed to relieve poverty and fight community deterioration through a program of financial assistance in the form of low cost or long term loans to various businesses in economically depressed areas is exempt under section 501(c)(3) of the Code. Although some of the individuals receiving financial assistance in their business endeavors may not themselves qualify for charitable assistance, that fact does not detract from the charitable nature of the program. The recipients of the loans are merely the instruments by which the charitable purposes are sought to be accomplished.

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 or importance of truly exempt purposes.

In Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973) the Court said operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court found that the organization's officers received amounts of money in the form of "grants." These grants carried with them no legal obligation to repay any interest or principal. Petitioner contended, as it had during the administrative proceeding before the IRS, that the grants were made in furtherance of a charitable purpose: to assist the poor who were in need of food, clothing, shelter, and medical attention. However, petitioner was unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The only documentation contained in the administrative record was a list of grants made during one of the three years in question which included the name of the recipient, the amount of the grant, and the "reason" for the grant which was specified as either unemployment, moving expenses, scholarship, or medical expense. This information was insufficient in determining whether the grants were made in an objective and nondiscriminatory manner and whether the distribution of such grants was made in furtherance of an exempt purpose. The failure to develop criteria for "grant" disbursements or to keep adequate records of each recipient can result in abuse. Accordingly it was found that the organization failed to establish that their disbursements constituted an activity in furtherance of an exempt purpose.

In B. S. W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), it was stated that free or below cost service is only one of several factors to consider in making a determination. Others include the particular manner in which the organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits. All of these must be considered, for no single factor alone is determinative.

In Retired Teachers Legal Defense Fund v. Commissioner, 78 T.C. 280, 286 (1982), the Court stated that the private benefit prohibition of section 501(c)(3) of the Code applies to all kinds of persons and groups, not just those "insiders" subject to the more strict inurement proscription. Prohibited private benefit may include an "advantage; profit; fruit; privilege; gain or interest."

In Living Faith Inc. v Commissioner, 60 T.C.M., 710, 713(1990), aff'd 950 F.2d 365 (& Cir. 1991) the court wrote that the activities were conducted as a business and the organization was in direct competition with other restaurants and health food stores; thus it did not qualify for exemption under Section 501(c)(3). The appellate court stated the factors that the court relied on to find commerciality and thus offered the best contemporary explanation of the commerciality doctrine. These factors include:

- 1) The organization sold goods and services to the public.
- 2) The organization was in direct competition with for profit businesses (Food stores and restaurants).
- 3) The prices set by the organization were based on pricing formulas common in retail food businesses.
- 4) The organization utilized promotional materials and "Commercial catch phrases" to enhance sales.
- 5) The organization advertised its services and food.
- 6) The organization did not receive any charitable contributions.

Application of Law

It is well established that charitable organizations may in certain situations give money, goods, or services to individuals without jeopardizing exempt status. Many forms of charity involve aid to individuals. Help to poor people and to deserving students are traditional examples. Providing interest free-loans to members of a community is not, per se, a charitable activity. As with any endeavor sought to be classified as a charitable activity, the activity must itself be charitable, or, the activity, if not charitable, must be conducted in furtherance of charitable purposes.

Unlike the organization discussed in Rev. Rul. 69-441, you do not provide information or counseling to the public or the members of the community on budgeting, buying practices, or the sound use of consumer credit. Also, unlike the organization discussed in Rev. Rul. 74-587, you have not established that your interest-free loan program lessens prejudice and discrimination against a minority group, or, that your operations are in an impoverished area, or that you are otherwise relieving poverty and lessening neighborhood tensions, or combating community deterioration.

Much like the organization described in Church in Boston v. Commissioner, supra, you have been unable to furnish any documented criteria which would demonstrate the selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The potential recipient's classification as a member of such a class is dependent solely on the assertion of the member that a loan is needed. Like the organization discussed in Rev. Rul. 64-274, objective criteria must be used to establish merit or need for the services of a charitable organization.

As in the case of B. S. W. Group, Inc. v. Commissioner, supra, free or below cost service is only one of several factors to consider in making a determination. Other things that must be considered are the particular manner in which the organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits. Your website offers recruiting at a discount rate to potential employers and business loans up to \$25,000. Although you provide

interest free loans, this activity in and of itself has a commercial hue and furthers a non-exempt purpose.

You are also like the organization described in Living Faith Inc. v Commissioner, supra, because you are operating as a business and are in direct competition with all other recruiting businesses. You are promoting your services via a website like a commercial business. You are also paying the headhunters a percentage of the salary of the placed individual, which is no different than that of a for-profit enterprise.

Serving the interests of private parties, such as for-profit businesses, constitutes a substantial nonexempt purpose that precludes exemption under section 501(c)(3). See, Old Dominion Box Co. v. United States, cited above. You are not only providing loans to businesses, you are also paying recruiting fees on behalf of for-profit companies who hire employees you send their way. As stated in the above cited case Retired Teachers Legal Defense Fund v. Commissioner, the private benefit prohibition of section 501(c)(3) of the Code applies to all kinds of persons and groups, not just those "insiders" subject to the more strict inurement proscription. Prohibited private benefit may include an "advantage; profit; fruit; privilege; gain or interest." In this way, you are providing the substantial private benefit of profit, privilege and gain to for-profit enterprises.

Unlike the organizations discussed in Rev. Rul. 56-304, which made distributions on a truly charitable basis, you have not established that your distributions will be for charitable or educational purposes. An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit. To satisfy the 'operational test' the organization's resources must be devoted to purposes that qualify as exclusively charitable within the meaning of section 501(c)(3) of the Code and the applicable regulations.

Furthermore, as discussed in Rev. Rul. 56-304, your activities lack the elements of public usefulness and benefit which are required of organizations qualifying for exemption under section 501(c)(3) of the Code. Per Section 1.501(c)(3)-1(a)(1) of the regulations, if an organization fails to meet either the organizational test or the operational test, it is not exempt. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) of the Code unless it serves public, rather than private interests. You failed to mention that you had employees until we reviewed your bank statements and they revealed substantial salary payments. There were no salary expenditures included in your proposed financial data. You do not have bylaws and you have not provided any details regarding the criteria for employees or how the salary amounts are determined. You made a substantial payment to your executive director. In response to our inquiry regarding this payment, you provided very little information or explanation how you determined the payment was reasonable.

Although your activities may serve to facilitate incidental economic development in your community, they are not conducted in the manner described in Rev. Rul. 74-587. Specifically, your services are not limited to businesses which are experiencing difficulty because of their location in a deteriorated area. Aside from the fact that your services are not limited to "depressed" businesses, the type of assistance offered also differs from that described in Rev. Rul. 74-587. The organization described in Rev. Rul. 74-587 merely offered financial assistance to qualifying businesses, which could then use those funds to conduct their own improvement programs. Your services cross the line between charitable activities and business activities.

As is iterated throughout your application and attachments thereto, your recruiting activity substantially serves to benefit the for-profit businesses. You pay the fee, rather than the new employer, when an employee is hired. Although this also benefits the persons seeking employment, any such public benefit derived from your program is considered incidental to the private benefit to the for-profit businesses. You are similar to a for-profit recruiting firm, with a notable incentive given to the for-profit businesses looking for new employees as you pay the recruiting fee on their behalf to entice them to hire the individuals you deem employable. Such serving of the private interests of businesses precludes recognition of tax exemption under section 501(c)(3) of the Code as provided by section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Although you say you request these employers donate back to you 10% of the salary of the new employee, you also admit that you have yet to receive much revenue result from this request.

The presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes as stated in Better Business Bureau of Washington, D.C., Inc. v. United States, supra. Because more than an insubstantial part of your activities constitutes various forms of recruiting and business activities, you are precluded recognition of tax exemption under section 501(c)(3) of the Code per section 1.501(c)(3)-1(e) of the regulations.

Applicant's Position

You explained how making a business loans falls within the purview of Section 501(c)(3) of the Code. You said:

Treasury regulation 1.501(c)(3)-1(d) includes as an exempt purpose a charitable purpose. That term is in turn further defined in (2) of that subsection as including relief of the poor and distressed that includes relief of indigent persons (as noted therein). To make loans to such indigent persons [sic] so that they can thereby relieve their poor and/or distressed should clearly fall into this definition of charitable purpose.

You further cited Rev. Rul. 61-87 (as amplified further in Rev. Rul. 63-220). In these rulings the question was raised whether a corporation engaged in making loans to students for educational purposes or to educational institutions to supplement their student loan funds may qualify for exemption as a 501(c)(3) organization. You said this constituted an exempt purpose and noted that students are not usually employed and are not considered good credit risks so that commercial loans are not available to them. You also asserted the basic purpose of the organization was to aid students in attaining an education it was held that the organization is exempt as one that is organized and operated exclusively for charitable purposes. You said in the instant case facts are similar to your organization but rather than relating to students wanting to attain an education it related to indigent people seeking to attain relief of their indigent state. You go on to say in that ruling the person involved need to borrow the monies in order to try to start a business or to jump start a failed business. You say as in that case such persons could not otherwise secure a commercial loan because of their bad credit risk. You concluded by saying the making of such loans in this case should similarly constitute an exempt purpose.

You also said you make loans to people that have a good idea, but no money. You make interest free loans to them and give them a mentor. They must have a business plan in place. You said you are currently working with 30 businesses right now and those businesses are employing over 100 individuals.

Service's Response to Application Position

While you purport making business loans falls within the purview of Section 501(c)(3) of the Code, that is only the case if you are providing for relief of the poor and distressed. Your loans are available to anyone, not just the poor and distressed. In fact, you made a loan directly to a for-profit business. You provided no evidence that the recipients of your funds were poor and distressed.

Your citations of Rev. Rul. 61-87 and Rev. Rul. 63-220 provide for exemption for organizations with very different purposes than yours. These rulings describe organizations engaged in making loans to students for educational purposes or to educational institutions to supplement their student loan funds. While you said the facts are similar to those of your organization, the circumstances are vastly different. These rulings are based on organizations which were providing low interest student loans for educational purposes. In contrast, your business loans only further business purposes, which is not an exempt function. Not only are the recipients of your business loans not members of a charitable class as stated in Old Dominion Box Co., Inc v United States, supra, but you are also operating for the benefit of for-profit businesses, which constitutes a substantial nonexempt purpose.

The fact that you have interviewed 1900 people, who are currently in your database waiting for a job, emphasizes the commerciality of your operations. Similar to a for-profit organization, your recruiters receive a percentage of the salary of the placed individual.

Applicant's Protest

You stated the very creation of this organization was made for charitable reasons, namely to help the countless individuals who lost their jobs or businesses and were struggling to support themselves and their families. You said this was the sole reason for your creation and, in your opinion, it meets all of the criteria required to qualify as a Section 501(c)(3) organization, including both the operational test and the organizational test.

While you had not previously submitted Bylaws, in response to our adverse letter you submitted Bylaws.

You further state you have a distinct decision making procedure. The board members are not compensated and at the initial stage of development and when the application was filed there was not enough information available to know whether there would be compensation to lower level employees. You said the numbers provided in the original application were mere projections.

You also state eligibility of the individuals based upon the recommendation of a Rabbi as such clergy verifies to the organization that such individual is needy and explains his basis for such conclusion. You said there are also additional specific criteria for eligibility; there is a selection process and recordkeeping procedures and substantiation of funds used. You say you do have policies and procedures and you retain all documents in your records. You say you do attempt to verify the use of funds.

Regarding your use of the word "networking" on your website, you said this is one of the divisions of the organization which attempts to network a person with a job that matches their needs. You now say this plan was never adopted and you have never received a reduced fee nor has it ever charged any fee nor does it intend to do so.

You said our statements regarding your business loan program are inaccurate. You say you have an extensive form for applicants of the business loan program. You said there is a board that approves or denies approval after meeting face to face and reviewing financials on the company as well as the personal finances of the applicant. You say you have extensive evaluative criteria and the process has proven near flawless based on the servicing of the debt. You assign a mentor to "Shepard" the business when

needed. The applicants are referred mostly by clergy and all of the loans have guarantors who are confirmed worthy of shouldering the debt in case of default. Regarding salaries, you said there was no clear projection of what future expenses would be when the application was filed, but as it turned out, because of the very extensive activity persons had to be hired to do the required work and due diligence in connection with the applications and an executive director was appointed to oversee this activity.

You said we are not correct in our assertion that your loans are not for the relief of the poor and distressed. You said the loans are either made directly for relief of the poor or distressed or are made to bolster the business of new companies that would then be able to hire such people. No loans are made by you for any purpose other than to provide relief to the poor and distressed either directly or indirectly through the bolstering of a business that it believes would then hire such persons.

You said our assumption that the loans are often made to further business purposes cause us to reject any comparison of these loans to those made under the facts of Rev. Rul. 61-87 and 63-220. You said the loans made to individuals to start businesses should clearly qualify as an exempt activity in accordance with Rev. Rul. 61-87 and 63-220. The recipients of these loans were either directly the targeted individuals or were for-profit businesses that were bolstered so that they can hire the targeted individuals. All loans made were made only for that one exempt purpose, namely, to aid those persons who have lost their jobs or businesses and are unable to meet their basic needs of themselves and their families. You claim none of the loans made by you were made for any other purpose so that all loans made furthered an exempt purpose and were clearly comparable to these revenue rulings but with different fact.

You said because you have interviewed 1900 people, this shows a pressing charitable purpose to aid people in need. You said it is in no way a commercial endeavor and you have never received a reduced fee or charged any fee so that it does not in any way benefit from placing these individuals or from helping them in other ways.

Regarding the operational and organizational tests, you say you are organized and operated exclusively for charitable purposes as the term is defined in the regulations. You said the term charitable is defined in regulation 1.501(c)(3)-1(d)(2) to include the relief of the poor and distressed. You said persons who have lost their businesses and jobs are unable to pay for their basic needs and that of their families can certainly be classified as poor and distressed and any activity undertaken to relief of such persons would consequently constitute charitable activity. You said inasmuch as your primary purpose is to relieve such distress it clearly meets the operational test set forth in Section 1.501(c)(3)-1(c)(1) of the regulations. Your support has been derived exclusively from contributions made by individuals or their businesses so that you can achieve the goal of helping these persons who have lost their jobs or businesses and all

its activities are geared to provide such relief directly or indirectly. This goal of helping such breadwinners who have lost their jobs or businesses is the sole reason for your existence.

You said "the Revenue Rulings and case [sic] cited in your letter are not a basis for denial of exemption." You further stated none of the rulings cited support the denial of exemption. You also said Rev. Rul. 56-304, which allows distributions to individuals if made on a true charitable basis and provided adequate records are maintained, in fact supports your activities. You said you maintain adequate records mostly in line with what this ruling requires and the distributions you make are clearly for charitable purposes.

Regarding our assertion you have not established your distributions will be for charitable or educational purposes, you said this is "totally without merit." You said your whole existence is to further a charitable purpose and if there were to be no further need for such charitable purpose for which it was organized, you would cease activities. You said our statement regarding your activities lacking an element of public usefulness "is wholly without basis." An effort to relieve the distress and loss of income of persons who have lost their means of livelihood and thereby are unable to adequately support themselves or their families certainly represents a public purpose.

You said Rev. Rul. 74-587 supports your position in that your purpose is not similar to that of the organization described in that ruling since it's not your purpose to help depressed businesses, but rather it is to help persons in distress because of the loss of their livelihood so that in that regard the ruling is not applicable to your facts. You further asserted that the ruling does hold that "Although some of the individuals receiving financial assistance in their business endeavors under the organization's program may not themselves qualify for charitable assistance as such, that fact does not detract from the charitable character of the organization's program. The recipients of loans are merely the instruments by which the charitable purposes are sought to be accomplished." You stated in the instant case, this organization may at times provide aid to bolster new businesses so that they would hire some of the persons who have lost their jobs or businesses. Although this aid may not itself qualify for charitable assistance, you said it does not detract from your charitable purposes. Thus, you say, Rev. Rul. 74-587 is supportive of the position of this organization that it does meet the operational test and that it does qualify as a Section 501(c)(3) organization. You admit that some of the individuals receiving financial assistance in their business endeavors would not qualify for assistance as individuals, yet you made business loans to them.

Regarding our reference to Better Business Bureau of Washington, D.C., Inc. v. United States, supra, you said this case is not applicable. You said the sole purpose of this organization is to aid those persons who have lost their jobs or businesses and as a result are unable to adequately support themselves and their families. "Any gain that

may be derived from a for-profit business from loans or recruiting fees paid are clearly merely incidental to this overriding purpose and therefore this organization should qualify as an exempt organization in accordance with Section 501(c)(3) of the Code."

Service's Response To Protest

The Bylaws you submitted contained standard, non-profit language and do not provide any additional information regarding your activities that were not provided earlier with your application.

You did not provide any documentation to support your claim that you assist poor, distressed and needy individuals. Also, the term "needy" is subjective and your criteria for such classification were not specifically defined. You provided no documentation regarding your policies and procedures for selection of recipients. You do not retain any financial documents and you also stated that you require no documentation from recipients of your grants to verify how the grant funds were used.

Your website continues to state you will be a recruiter at a reduced fee. You have a team of professional recruiters and headhunters, a seasoned recruiting professional, and several part time and full time people working for you to match jobs and applicants. This aligns with our assertion that you are essentially operating as a commercial headhunter and precludes you from exemption under Section 501(c)(3) of the Code. This is a non-exempt purpose.

You give loans through one of your divisions to any for-profit business that applies to help bolster their business in the belief that these for-profits will then hire more people. The lending to for-profit business to help bolster the business is a commercial, non-exempt purpose.

Making business loans to for-profit businesses is not an exclusively exempt purpose under Section 501(c)(3) of the Code. In addition the extending of loans to needy students to further their education as is the case in Revenue Ruling 61-87 and 63-220 cannot be considered similar to loans made to for-profit businesses to bolster their businesses in the hope that this will indirectly lead to additional hiring.

Your website indicates that you are a recruiter. You are paying a staffing company to place unemployed individuals. As previously indicated, you have a team of recruiters and headhunters who are paid to find jobs for individuals and those recruiters receive a percentage of the salary of the individual placed. This is an activity normally carried on by a for-profit business. Section 1.501(c)(3)-1(e) of the regulations provides that an organization which is operated for the primary purpose of carrying on a business is not exempt under section 501(c)(3).

Again as stated above you provided no documentation regarding your policies and procedures for selection of recipients and you stated you require no documentation from recipients of your grants to verify how the grant funds were used. You make loans to for-profit business and you operate a commercial recruiting agency to match people to jobs. Therefore you are not organized and operated for charitable purposes as defined in section 1.501(c)3-1(d)(2) of the regulations.

Despite your claim that you are similar to the organization in Revenue Ruling 56-304, you provided no documentation regarding these distributions. You also have no written procedures or policies regarding these distributions. You provided a list that included several last names some of which were the same as your officers. You also do not retain any financial documents and you stated that you require no documentation from recipients of your grants to verify how the grant funds were used. Therefore you have not substantiated that your distribution of funds to individuals was made in a true charitable basis like the organization in Revenue ruling 56-304.

You admit that some of the individuals receiving financial assistance in their business endeavors would not qualify for assistance as such, yet you made business loans to them. This supports our assertion that you are not furthering exclusively charitable purposes. The organization in Revenue ruling 74-587 operated in an economically depressed area. In addition the organization has a selection process by which deserving applicants are selected, reviews their progress periodically and provides technical assistance and counseling. You make loans to for-profit businesses to bolster their business in the hope that they will hire more people. Therefore you are not like the organization in this revenue ruling and do not meet the operational test for exemption under 501(c)(3) of the Code.

Gains derived by the for-profit businesses, unlike your assertion, are not incidental to an exempt purpose. Rather, a single non-exempt purpose would destroy a claim for exemption and in your case the lack of documentation and follow up of assistance provided to individuals, the granting of loans to for-profit businesses and the operation of a recruiting agency are all substantial activities that are not in furtherance of an exempt purpose and therefore destroy your claim for exemption under section 501(c)(3) of the Code.

Conclusion

Based on the above facts and law, we conclude you do not qualify for exemption, as you fail the operational test under section 501(c)(3) of the IRC, as outlined below. In conclusion, the above facts and law show the following four separate reasons, any one of which standing alone, cause you to fail the operational test under section 501(c)(3).

1. Your business loan program is not conducted in a charitable manner. You provided no evidence of review and consideration of the loan, no evidence that the recipient was needy and no evidence that the loan furthered an exempt purpose under section 501(c)(3).
2. The payments you make to for-profit businesses as an incentive to hire individuals constitutes a substantial private benefit to those businesses. Although this also benefits the persons seeking employment, any such public benefit derived from your program is considered incidental to the private benefit primarily served to the for-profit businesses. Such serving of private interests causes you to fail the operational test and precludes you from recognition of tax exemption under section 501(c)(3) of the Code as provided by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.
3. Your recruiting activities and the manner in which they are conducted are indistinguishable from a for-profit recruiting firm. This activity constitutes a non-exempt commercial purpose, causing you to fail the operational test under Section 501(c)(3) of the Code.
4. You do not define "needy" or retain financial documentation from the individuals seeking grants. You do not have any written policies, procedures or records demonstrating grants and/or loans are made in an objective and charitable manner, including when made to a relative. You provided no substantiation on use of funds or evidence of verification procedures.

Accordingly we conclude you do not qualify for exemption under section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my

knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

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

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

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

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

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

Mail to:

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,

Lois G. Lerner
Director, Exempt Organizations

Enclosure: Publication 892