



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201429027**

Release Date: 7/18/2014

Date: 12/12/12

UIL: 501.00-00

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 under I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3).

We made this determination for the following reason(s):

You failed to establish that you are organized and operated for purposes described in I.R.C. § 501(c)(3). You are not organized for an exempt purpose, do not operate exclusively for an exempt purpose and do not engage primarily in activities that accomplish an exempt purpose.

You have also failed to establish that you serve a public rather than a private interest within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). You are operated to benefit private interests more than incidentally. Accordingly, you are not an organization exempt from tax under I.R.C. § 501(c)(3).

Because you do not qualify for exemption as an organization described in I.R.C. § 501(c)(3), donors may not deduct contributions to you under I.R.C. § 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. 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.

If you decide to contest this determination under the declaratory judgment provisions of I.R.C. § 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under I.R.C. § 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under I.R.C. § 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.

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,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements

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



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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: 12/12/12

UIL:

501.00-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

A =
B =
State =
LLC =
Campaigns =
Company 1 =
Company 2 =
Fee =
Date 1 =
Date 2 =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code ("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.

FACTS:

You were incorporated in State on Date 1 for charitable purposes within the meaning of §501(c)(3) of the Internal Revenue Code. Your purpose, as stated in your articles of incorporation, is to support the fundraising efforts of non-profit organizations.

Your website states that you were established to

You state that your mission

You state that your sources of support will come from contributions, conferences, and membership fees. In your letter of Date 2, you state that you solicit contributions from private foundations, public charities, corporations and individual donors that are interested in promoting mobile giving and fundraising using other technology platforms to encourage engagement in charitable giving by younger donors.

Your purpose, as described in more detail in your Form 1023 ("application"), is to facilitate the distribution of contributions made by wireless mobile telephone customers to charities sponsoring fundraising projects. Wireless mobile carriers do not choose to deal directly with the sponsoring charities because of the administrative burden. Your role is to act as an 'aggregator' and administrative intermediary between the carriers and sponsoring charities to collect and distribute the donations.

In your role as an aggregator and administrative intermediary between wireless mobile phone companies and their customers wanting the convenience of making contributions to charity over the phone, you certify that the charity is recognized as exempt under §501(c)(3). In addition, you state that the mobile telephone carriers require evidence that the charity is properly registered to solicit contributions in the states where it is soliciting and that it satisfies established standards for accountability, transparency and good governance. You require charities to complete a checklist, indicating all the states in which the charity is registered to solicit funds.

Once approved, an eligible charity will be able to receive donations through donor text messaging and possibly other electronic means in the future. The donor sends a text message indicating the amount he or she wants to donate and receives an automated message from you to confirm the donation. The carrier charges the amount to the donor's next cellular phone bill and sends the stated donation to you. You direct 100% of the donation to the charity conducting the mobile phone campaign and provide the donor with a gift receipt. You charge no fees to the donor.

The non-profit organizations that you support may change each month depending on the wireless carrier approvals for mobile campaigns. You generate and keep records regarding all transactions between donors, charities and the wireless carriers via software designed, maintained and owned by application service providers. You also keep records of

attempted donations by each consumer's cell phone number, noting the time of day, the wireless carrier, and whether or not the consumer confirmed the donation.

At the time you submitted your application, you had arrangements with two mobile phone companies to administer charitable campaigns. Your agreement with Company 1 allows you and other nonprofit organizations to use the wireless phone system to send content and messages directly to its subscribers. The agreement permits you to deliver messages and collect charitable contributions from the donors. In addition, it allows permitted third parties to use your connection to deliver messages to and collect charitable contributions from their own customers.

Your agreement with Company 2 is similar and allows you to offer a service or act as an aggregator for multiple services involving transmission of content through short messaging service or multimedia messaging service to Company 2's subscribers. You also have the ability to bill subscribers monthly for that content. Your services provide Company 2's subscribers with the ability to contribute to charitable organizations using Company 2's mobile devices.

For the approved charities to participate in fundraising campaigns using your services, they must contract separately with an application service provider. This service provider provides short codes and software to create the structure for the various programs and advertising of other mobile giving initiatives. Application service providers generally charge a donation transaction fee for each successful donation. They also charge an application fee, managing fees, and other associated fees. A charity cannot participate in mobile giving campaigns without the services of an application service provider. You do not specify which application service provider an approved charity must use to establish its mobile campaign.

You are a direct outgrowth of LLC. LLC is an application service provider founded and operated by A and B. A and B are also your founding board members. LLC develops patented web-based software technology that enables non-profit organizations to facilitate communication with prospective donors. LLC also provides consulting services to charities to manage their relationships with donors and conduct their fundraising campaigns.

You initially represented that your board of directors consisted solely of individuals who were partners of LLC. After further development from this office, you expanded your board to include three unrelated individuals. These additional board members represent academia, community foundations, and the mobile marketing arena. You state that no one receives any compensation in connection to their board duties. You submitted meeting minutes from seven board meetings showing decisions made and members attending. There were never more than four members in attendance. A and B attended and voted at all the meetings.

LLC's mobile-based wireless software technologies allow corporations to engage in mobile and on-line branding and marketing. LLC receives payments from clients based upon the services they purchase. They provide you leased space within their building for a nominal yearly rent. No written lease between you and LLC has been provided. LLC also provides you with software free of charge. This software is developed and maintained by LLC. The software is designed to allow you to keep track of SMS records received via wireless carriers, aggregators, and intermediaries. You represent that there are no written contracts between you and LLC. There appears to be a substantial number of your clients that are using LLC as their application service provider. You also state that you have no employees, and your officers and directors donate their services. All of your officers and directors receive direct compensation from LLC.

You state that in addition to the aggregator role, you also conduct educational conferences two times a year. These conferences are intended to raise awareness of the use of wireless options for fundraising, broadcasting, branding, and provide a marketplace for providers to connect with interested parties. You charge a sliding scale fee structure to attend your conferences based upon time of registration. Additional funding for your conferences will be provided by companies that provide services related to mobile giving and marketing. You will spend approximately three months in the preparation and delivery of these conferences. The conferences will be open to the general public but due to the nature of the content, most attendees will be connected with wireless carriers and other businesses that are interested in the collection of charitable contributions through mobile technologies. LLC is a primary sponsor of your conferences and is listed in all promotional materials and has a booth and signage at the conferences. Representatives from LLC have delivered presentations during the conferences. Other application service providers also are listed in the promotional materials and have a presence at the conferences.

LAW:

I.R.C. § 501(c)(3) provides that an organization is exempt from Federal income tax if it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and "no part of the net earnings of which inures to the benefit of any private shareholder or individual"

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that in order to be exempt under I.R.C. § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

Treas. Reg. § 1.501(a)(1)-1(c) defines a "private shareholder or individuals" as "persons having a personal and private interest in the activities of the organization."

Treas. Reg. § 1.501(c)(3)-1(c)(1) 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 I.R.C. § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(c)(2) provides that "[a]n 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"

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) 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 requirement of this subsection, the burden of proof is on the organization to show 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.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in I.R.C. § 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the under privileged; advancement of religion; and, advancement of education or science.

Treas. Reg. § 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of I.R.C. § 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in I.R.C. § 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under I.R.C. § 501(c)(3).

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 I.R.C. § 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.

Rev. Rul. 71-529, 1971 C.B. 234, describes a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds. Because the organization is performing an essential function for tax exempt organizations for a charge substantially below cost, it qualifies for exemption under I.R.C. § 501(c)(3).

In Rev. Rul. 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services for § 501(c)(3) organizations to improve the administration of their charitable programs. The organization enters into agreements with unrelated § 501(c)(3) organizations to furnish managerial and consulting services on a cost basis. This Revenue Ruling stated that:

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.

Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under I.R.C. § 501(c)(3), regardless of the number or importance of statutorily exempt purposes. Thus, the operational test standard prohibiting a substantial nonexempt purpose is broad enough to include inurement, private benefit, and operations that further nonprofit goals outside the scope of I.R.C. § 501(c)(3).

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under I.R.C. § 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. The court found that the corporation had completely failed to demonstrate that its services were not in competition with commercial businesses. The court found that the organization's financing did not resemble that of the typical 501(c)(3) organization. It had not solicited nor had it received voluntary contributions from the public. Its only source of income was from fees for services, and those fees were set high enough to recoup all projected costs, and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost."

[T]he critical inquiry is whether the petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for petitioner... Factors

such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence of a forbidden predominant purpose.

The court in est of Hawaii v. Commissioner, 71 T.C. 1067(1979) found that an organization formed to educate people in Hawaii in the theory and practice of "est" was a part of a "franchise system which is operated for private benefit," and therefore may not be recognized as exempt under section 501(c)(3) of the Code. The applicant for exempt status was not formally controlled by the same individuals controlling the for-profit organization owning the license to the est body of knowledge, publications, methods, etc. However, the for-profit exerted "considerable control" over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court found that the fact that the applicant's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit corporations were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether it benefited substantially from the operation of the applicant. The court determined that there was a substantial private benefit because the applicant "was simply the instrument to subsidize the for-profit corporations and not *vice versa* and had no life independent of those corporations."

In P.L.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The court reasoned that, because the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed it was independent because there was separate accounting and no payments were going to the bar. The court was not persuaded when reasoning that:

A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

The court went on to conclude that, because the record did not show that the organization was operated for exempt purposes, but rather indicated that it benefited private interest, exemption was properly denied.

In Church By Mail, Inc. v. Commissioner, T.C. Memo 1984-349, *aff'd* 765 F. 2d 1387 (9th Cir. 1985) the tax court found that a church was operated with a substantial purpose of providing a market for an advertising and mailing company owned by the same people who

controlled the church. The church argued that the contracts between the two were reasonable, but the Court of Appeals pointed out 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."

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36, the court found an organization that ran tours aimed at doctors and their families was operated to benefit the private interests of both an individual who controlled the organization and a for-profit travel agency (H&C Tours) that handled all of its tour arrangements.

The organization used the H&C Tours exclusively for all travel arrangements. There was no evidence that the organization solicited competitive bids from any travel agency for travel arrangements for its tours other than H&C Tours. The organization physically located its office within the offices of H&C Tours, which provided it secretarial, clerical, and administrative personnel for a fee equal to H&C Tours' costs. The organization spent 90 percent of its revenue on travel brochures prepared to solicit customers for tours arranged by the travel agency. The brochures emphasized the sightseeing and recreational component of the tours, but did not describe the medical curriculum for the seminars and symposia that was the basis for exemption. Educational activities occurred on less than one-half of the days on a typical tour.

The court found that a substantial purpose of the organization's operations was to increase the income of H&C Tours. The president of H&C Tours controlled the organization and exercised that control for the benefit of H&C Tours and himself. Moreover, the administrative record supported the finding that the organization was formed to obtain customers for H&C Tours.

The court in Redlands Surgical Services v. Commissioner, 113 T.C. 47 (1999) stated that merely entering a partnership with private parties in which they receive a return on a capital investment does not impermissibly confer private benefit. However, a detailed examination of the Redlands surgery center venture convinced the court that the petitioner had ceded control to private parties having an independent economic interest in the activity and no obligation to promote charitable purposes ahead of profit making. Therefore, the applicant was not operated exclusively for exempt purposes. The Court pointed to the long-term management contract with a party related to the for-profit, with broad discretion, and a fee based upon gross revenue. Furthermore, the record did not show that the nonprofit had any role in negotiating the contract, and that it was executed for both parties by the same individual, indicating self-dealing. Nor did the record show that the petitioner had any informal control: as it did not have the resources or the ability to oversee the operations.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the court concluded that an organization did not qualify for tax-exemption under I.R.C. § 501(c)(3) because it was operated for nonexempt commercial purposes rather than for exempt purposes. Among the major factors the court considered in reaching this conclusion was the organization's competition with for-profit commercial entities, the extent and degree of below cost services provided, the pricing policies, and the reasonableness of financial reserves. Additional factors included whether the organization used commercial promotional methods, such as advertising, and the extent to which the organization received charitable donations.

ANALYSIS:

Based on your submission, we cannot conclude that you are properly organized and operated under I.R.C. § 501(c)(3) of the Code. Your articles of incorporation are defective. Furthermore, the information in the file shows you do not operate for an exempt purpose, but rather in a commercial manner for a significant non-exempt purpose and to provide private benefit to a related for-profit enterprise and to the mobile wireless carriers. In addition, there is the possibility that your income may inure to your founders because they exercise control over your operations.

Organizational Test

Section 1.501(c)(3)-1(b)(1)(i) of the regulations explains that an entity will only be considered to be organized exclusively for one or more exempt purposes if its articles of incorporation limit its purposes to one or more purposes listed as exempt in I.R.C. § 501(c)(3). Your articles state that you are organized to support the fundraising efforts of nonprofit organizations. Supporting fundraising efforts by collecting and transmitting donations made by donors via mobile devices is not an inherently exempt purpose under I.R.C. § 501(c)(3) and can be conducted in a manner that furthers nonexempt purposes. Nothing in your articles of incorporation restricts you to conduct your activities in a manner that will exclusively further charitable, educational or other exempt purposes. Therefore, you are not properly organized under the Code.

Operational Test

Substantial Nonexempt Purpose

Only an insubstantial portion of the activity of an exempt organization may further a non-exempt purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Even if we agreed that you were organized and operated for an exempt purpose, the fact that you also have a substantial non-exempt

purpose would be sufficient to deny recognition to you. Specifically, the court in Better Business Bureau held that if education is conducted for a non-exempt purpose, the organization will not be recognized as exempt. Based on the information in the file, it appears that you operate in a commercial manner for the substantial, non-exempt purpose of furthering the business of LLC, other application service providers and the wireless mobile phone carriers participating in Campaigns.

You conduct your operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in the manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. (See Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003). Thus, the way in which you go about your activities indicates that you are operating for the purpose of providing customers for application service providers. The way in which you go about your activities also indicates that you are operating for the purpose of relieving the administrative burdens of the wireless mobile phone carriers who participate in the Campaigns.

First, you lack the public support and public control that are characteristic of a charitable organization seeking to serve the public. You state in your application that you will receive contributions from the general public, government or private foundation grants. However, you do not even have a fundraising program to solicit such contributions. You included income from mobile donations via wireless carriers as part of your revenues. However, you have no legal right to those funds and are merely a conduit for the distribution of the funds from the wireless mobile phone carriers to specified charities. Excluding the revenues from mobile donations, you receive about half of your remaining revenues from the conferences that you conduct. Most of the revenues from the conferences are from fees charged to for-profit sponsors and other participants who are in the mobile communication business. You are similar to the organization described in B.S.W. Group, 70 T.C. 352 (1978), in which the court cited lack of solicitation and sole support from fees as factors disfavoring exemption.

In addition to your lack of public financial support, your organization shows none of the public involvement that characterizes organizations serving a public interest. Your conference activities are carried out exclusively by paid contractors. In addition, the same directors who are members of your governing board also serve as your officers. Moreover, you share the same board members and officers with those of LLC, a for-profit entity with which you do business. In fact, two of your board members are partners of LLC. You are unlike the organization described in Rev. Rul. 69-441, supra, in which the organization's Board of Directors is comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The provision of commercial services may serve primarily charitable purposes when those services are provided exclusively to exempt organizations, are an essential function of such organizations, and are provided for a fee that is substantially below cost. See Rev. Ruls. 71-

529 and 72-369, supra. However, you have not established that your services are an essential function to your tax exempt partners.

By collecting and storing data regarding transactions between donors, charities, and the mobile carriers, you are providing a service that is commercial in nature. Thus you serve a substantial non-exempt purpose. See Treas. Reg. § 1.501(c)(3)-1(c)(1) (an organization will not be regarded as "operated exclusively" for one or more exempt purposes under I.R.C. § 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose).

Your relationship to LLC suggests that you operate to further its business. Each charity that participates in a Campaign is required to pay a fee to LLC or another application service provider. A substantial number of the charities that participate in Campaigns are also clients of LLC. Although you are organized as a separate entity, LLC conducts all of your activities relating to the Campaigns. Like the organization in Church by Mail, T.C. Memo 1984-349, *aff'd* 765 F. 2d 1387 (9th Cir. 1985), you have chosen without any competition one for-profit entity to manage every aspect of your business. As the court held in Church by Mail, the critical inquiry is whether the whole enterprise is carried out in such a way that the for-profit benefits substantially.

Conducting conferences where you market mobile communication technology and consulting services does not promote exempt purposes under I.R.C. § 501(c)(3). You state that you plan to conduct two conferences a year open to the public. You also maintain that due to the specific nature of the content, most attendees will be connected with wireless carriers and other businesses that are interested in the collection of charitable contributions through mobile technologies. These conferences are intended to raise awareness of the use of wireless options for fundraising, broadcasting, branding, and provide a marketplace for providers to connect with interested parties. You plan to encourage and host social networking activities during and following your seminars between exempt organizations and businesses offering services to these charities. Some of these lectures and activities are more akin to marketing and networking than educational. By informing application service providers, wireless carriers, and other technology related businesses of the channels of fundraising available you market LLC's offerings and your services.

While there may be some educational content, these conferences and networking sessions primarily foster future commercial business transactions for the for-profits. See American Institute for Economic Research, 302 F. 2d at 939 (the Court held that the organization did not qualify for exemption under I.R.C. § 501(c)(3), because its commercial purpose was primary and not incidental to its educational purpose).

Furthermore, even if your conferences were considered to be educational they comprise of less than 40 percent of your overall time and thus are an insubstantial portion of your activities.

Operation for Private Benefit

Even if you had an exempt purpose, you would still have to show that you benefit the general public rather than the private interests of a select few. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that private interests are those such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by them. Private individuals may receive incidental benefits that are a necessary concomitant to achieving an exempt purpose, for example doctors paid to treat patients. However, the benefits you provide to the private interests of LLC, other application service providers, and the mobile phone companies to whom your clients subscribe are not incidental, but actually prevent you from achieving an exempt purpose.

Control is an important factor in determining whether an organization operates for the benefit of private interests. When private individuals or for-profit entities have either formal or effective control of a non-profit organization, it raises questions concerning whether the organization furthers the profit-seeking motivations of those private individuals or entities. See Redlands, 113 T.C. 47 (1999).

You were founded by representatives of LLC at the behest of the mobile carriers with business interests in generating revenue from the mobile giving campaigns. The founders of the LLC, for a significant period of time, were the sole members of the board of directors of your organization. Even after your board was expanded to include three additional individuals, your minutes show that these original partners maintain strong control over your operations.

You have ceded control over your business to the for-profit management company, LLC. Although you do not have an agreement with LLC, LLC manages your business and administrative affairs. You have not negotiated at arm's length for services with other mobile communications service providers because LLC's owners and officers also control you. As a result, LLC is able to promote its services through you, at prices that serve the private interests of its owners (who are your board members), and in a manner that furthers its private business interests.

As in est of Hawaii, 71 T.C. 1067(1979), you are totally dependent upon one for-profit company for all of your operations. It provides employees, offices, equipment, and services. If you terminated the management agreement, you would cease to function. Although you do not have the long-term management agreement that the Court objected to in Redlands, 113 T.C. 47 (1999), the effect of ceding all control to LLC effectively keeps you from being independent. As the court pointed out in Redlands, you have no ability to oversee your activities because you have no independent employees or resources.

Your operations also substantially benefit the mobile carriers, LLC, and other application service providers by providing a client base for these organizations to charge fees for services based upon charitable giving.

By verifying that charities are eligible to participate in mobile giving campaigns you are providing a direct client stream for LLC. LLC will then charge the charities for the use of their programming and short codes. You were created to allow LLC to offer a variety of services to charities engaging in mobile technologies. Many of your clients end up using LLC for the management of their online presence and mobile campaigns. Your activities dovetail with the very nature of the services offered by LLC. This integration with LLC and other for profit entities is similar to relationships between exempt organizations and for profits in est of Hawaii, and Church by Mail, supra. Those courts found that the exempt organizations were operated to provide substantial benefit to the commercial entities and therefore were not entitled to exempt status.

You assert that you have taken steps to avoid private benefit by explaining the differences between the services you provide and those provided by the LLC. You also explain that once charities are deemed eligible to participate by you they may take that certification to any one of several application service providers. However, this does not eliminate the benefit of the client stream to LLC. You lease your space from LLC for a nominal yearly sum, use LLC's software free of charge, use its staff to conduct your validation process, and use its equipment to conduct your business. These facts suggest that you are not separate from LLC. Thus, your operations may substantially benefit LLC and the founders of your organization who are also the principals of LLC. They are in a position to gain financially from your activities.

In addition to LLC, you also benefit the private interests of the mobile carriers that participate in Campaigns. You provide a benefit to the mobile carriers benefit by relieving them of the administrative burden involved in verifying eligibility of charities applying to participate in Campaigns. Also you increase their business profits because they charge fees to donors for the convenience of enabling donors to contribute funds to specified charities. In addition, mobile carriers participate in and sponsor your conferences; thus, permitting them to market their services to attendees.

Also, other application service providers will benefit directly from services you provide through your verification of eligibility and conferences.

Agency

Another consequence of your relationship with the mobile carriers and LLC is that it appears that you are acting as an agent of the for-profits. The Service rarely questions separate status if the subsidiary actively conducts business, observes basic corporate formalities, and does not observe the formalities of an agent. You are separately organized from LLC

but you do not actively conduct business. You state that you generate no revenues from the continued verification of the charities beyond the initial fee charged. You are not able to continue to operate but for your relationship with LLC. You lease office space from LLC, but provided no copy of a written lease nor do your minutes indicate that one exists. You rely on the staff, software, and equipment to do the day to day functions of your programs. You have overlapping board members with LLC. Like the organization in P.L.L. Scholarship v. Commissioner, 82 T.C. (1984), your activities are so interrelated with LLC as to be functionally inseparable. It is well established that an impermissible private benefit results when for-profit entities are functionally interrelated with exempt organizations. See also, International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36. Here, you are functionally interrelated with LLC. Your initial officers remain on the board of directors and have substantial influence over your operations. Even after expansion of the board, at no point were LLC's principals less than 50% of members in attendance. Voting power on your board is vested in persons who will benefit financially, directly or indirectly, from your activities. Therefore, you are not entitled to tax exempt status under I.R.C. § 501(c)(3).

Lack of Control of Funds

You will receive donations from individuals through mobile giving campaigns. The donor will designate the charity to receive their donations through the use of short code. You deliver 100% of the donation to the designated charity. However, at no point do you have legal control of the funds. You have not provided any examples of contracts or documents provided to donors or charities of what happens should a charity become ineligible to receive donations at some point in the campaign. You have not established that you may exercise any rights to redirect any portions of the donations should the need arise. You are not receiving any portion of the donations to designate to charities of your selection. Nor have you explained who will be providing substantiation of the donation, you or the charity. Absent appropriate control of the funds, you operate as a conduit to direct charitable donations, an activity that has not been recognized as charitable within the meaning of I.R.C. § 501(c)(3).

CONCLUSION:

Based on the information provided in your Form 1023 and supporting documentation, we conclude that you are not organized and operated exclusively for purposes described in I.R.C. § 501(c)(3).

Accordingly, you do not qualify for exemption as an organization described in I.R.C. § 501(c)(3) and you must file federal income tax returns.

Contributions to you are not deductible under I.R.C. § 170.

You have the right to file a protest if you believe this ruling 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 ruling.

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, 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 protest 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 ruling, 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 this address:

Internal Revenue Service

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

Sincerely,

Holly O. Paz
Director, Rulings and Agreements