



Department of the Treasury
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Release Number: **201507026**
Release Date: 2/13/2015

Date: October 22, 2014

Uniform Issue List:

501.00-00
501.03-00
503.00-00

Employer ID Number:

Contact Person/ID Number:

Contact Telephone Number:

Form You Must File:

Tax Years:

Dear :

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

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

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

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

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

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Tamera Ripperda
Director, Exempt Organizations

Enclosures:

Notice 437

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

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

cc:



Department of the Treasury
Internal Revenue Service
1111 Constitution Ave, N.W.
Washington, DC 20224

Date: August 18, 2014

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend

State =
Date =
Charity =
Company =
Amount =
Website =

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code ("I.R.C."). Based on the information provided, we determined that you do not qualify for exemption under § 501(c)(3). This letter explains the basis for our conclusion. Please keep it for your records.

Facts

You were formed as a nonprofit corporation under the laws of State on Date. Your Articles of Incorporation ("Articles") state that you are organized exclusively for charitable, religious, educational, and scientific purposes, "incl for such purposes, the making of distributions to org's that qualify as exempt org's under section 501(c)(3) of the IRS Code, or corresponding section of any future fed tax code." You state your specific purpose is "to support other organizations conducting charitable activities" by collecting donations online on their behalf.

Your sole activity is providing fundraising services for a fee to Charity, individuals raising funds for their personal use, and other nonprofits. You were formed by the founder of for-profit organization, Company. Company provides donation acceptance services, including credit card and check acceptance. For many years Company raised donations for Charity on a fee basis. In recent years, Company and Charity entered into a multi-year contract where Company would continue to raise funds online and remit donations to Charity less specified processing and marketing fees priced at Amount per transaction. After executing the contract, your founder established you to take over the fundraising services contract with Charity.

You advertise your fundraising services on your website, Website, and Charity promotes you on its website as one of its "registered collection partner[s]." Individual donors can click on a hotlink to link to your webpage, from which donors choose how and to whom they want to donate. Your website provides options between a selected charity or menus with various fundraising projects and charities. Donors then make a donation, you collect the credit card or check amount, and you remit the donation minus your service fee to Charity or other designated charity. You operate daily and may have increased efforts during disaster times or dated campaigns. You do not carry on any other activities besides providing fundraising services for a fee. You state that you are "donor advised fund" because you accept donations from individual donors and then remit the donation amount minus your administrative and processing fees to the donor-selected charity.

You are funded by fundraising processing fees charged to charities and individuals for whom you accept donations on your website. You state that your fees are set to cover your costs associated with collecting the donations, which includes transaction costs, marketing costs, and operating costs such as website maintenance and officer salaries. You charge Charity a Amount fee for each donation received. You state that the fees charged are "very competitive" as compared to similar, for-profit fundraisers. You state that you will expand your activities to fundraise on behalf of other charities and individuals for their personal use. For future contracts, you will tailor fee schedules per charity and will charge a per transaction fee. All of your income comes from fees for fundraising services.

You state that founder established you because Company was losing money by nature of it being a for-profit and your founder sought to reap the benefits of non-profit status, such as discounted fees from online merchants and internet browsing companies. You provide that Company will continue its function of setting up companies to accept credit cards and other payment methods and further that your founder has two other for-profit companies that are similar to Company. You operate in the same office as founder's for-profit company, Company, and your founder's two other for-profit businesses. You have three officers and no other employees. You compensate your founder, founder's spouse, and your accountant as officers, who are also all directors.

Your board is comprised of three directors, including your founder, your founder's spouse, and your accountant/tax preparer. When asked, you declined to expand your board to include members who are not related, because you "feel it [is] best to keep the board small, making the decision making involved with rolling out the organization simpler." Your bylaws provide for shareholders.

Law

I.R.C. § 501(a) exempts from Federal income taxation organizations described in § 501(c).

I.R.C. § 501(c)(3) describes organizations that are organized and operated exclusively for religious, charitable, educational purposes, and other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

I.R.C. § 4966(d)(2) defines a "donor-advised fund" as (1) a fund or account owned and controlled by a sponsoring organization, (2) which is separately identified by reference to contributions of the donor or donors, and (3) where the donor (or a person appointed or designated by the donor) has or reasonably expects to have advisory privileges over the distribution or investments of the assets.

Treas. Reg. § 1.501(c)(3)-1(a)(1) states that in order to qualify under § 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) states 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 § 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(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Treas. Reg. § 1.501(c)(3)-1(d)(2) defines the term "charitable" as including the promotion of social welfare by organizations designed to relieve the poor and distressed or the underprivileged, to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

Treas. Reg. § 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of § 501(c)(3) even though it operates a trade or business as a substantial part of its activities, unless its primary purpose is carrying on of a trade or business that does not further charitable purposes.

Rev. Rul. 71-529, 1971-2 C.B. 234, held that a nonprofit organization providing assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualified for exemption under § 501(c)(3).

Rev. Rul. 72-369, 1972-2 C.B. 245, held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under § 501(c)(3).

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that 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.

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 section 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.

In Easter House v U.S., 12 Cl. Ct. 476 (1987), aff'd 846 F.2d 78 (Fed Cir 1988), the court found that an organization's primary activity was providing adoption services in a commercial manner. In so ruling, the court determined that the organization competed with other commercial organizations providing similar services; fees were the only source of revenue; it accumulated very substantial profits, because it set its fees in order to generate a profit; the accumulated capital was substantially greater than the amounts spent on charitable and educational activity; and the organization did not solicit and did not plan to solicit contributions.

In Zagfly, Inc. v. Commissioner, 105 T.C.M. (CCH) 1214 (2013), an applicant proposed to sell flowers over the Internet, allowing purchasers to direct a portion of their payment to recognized exempt organizations and to the applicant to cover its operating costs. The applicant argued that its primary purpose was not to operate a business but rather to serve charitable purposes, as it would facilitate the donation of its profits to other unrelated charitable organizations. The court held that the applicant itself was not operated for exempt purposes and rather was engaged in a trade or business that was not substantially related to an exempt purpose.

Application of Law

Based on the facts presented in your application and supporting documents, we conclude that you are not operated for exempt purposes. Accordingly, you do not qualify for exemption as an organization described in § 501(c)(3).

Your application and supporting documentation must demonstrate that your organization meets the operational test under § 1.501(c)(3)-1(a)(1). Exempt organizations must operate exclusively for exempt purposes. I.R.C. § 501(c)(3). The term exclusively has been interpreted to mean primarily. Treas. Reg. § 1.501(c)(3)-1(c)(1). A single substantial non-exempt purpose is sufficient to prevent exemption. Better Business Bureau v. U.S., 326 U.S. at 283. If an organization fails the operational test, it cannot qualify as an exempt organization under § 501(c)(3).

You were established to provide online fundraising services to nonprofit organizations for a fee. This is a substantial non-exempt purpose, and as such, you do not qualify for exemption.

Your sole activity of providing fundraising and marketing services to unrelated nonprofit organizations is not charitable within the meaning of the Code and Regulations. Treas. Reg. § 1.501(c)(3)-1(d)(2). You provide services in a commercial manner similar to the organizations described in Rev. Rul. 72-369, *supra*, and in *B.S.W. Group, Inc. v. Commissioner*, 70 T.C. 352 (1978). Also see, *Easter House v U.S.*, 12 Cl. Ct. 476 (1987). You are similar to the organization in *Zagfly, Inc. v. Commissioner*, 105 T.C.M. 1214 that was held not to qualify for exemption, as your primary activity of facilitating charitable donations to other unrelated nonprofit organizations is not an exempt activity serving charitable or otherwise exempt purposes. Further, you lack the donative intent to make your activity charitable as you do not offer your services for free or substantially below cost similar to the organization described in Rev. Rul. 71-529, *supra*.

Finally, you are not a donor advised fund as defined in § 4966(d)(2).

Conclusion

Based on the information provided, we are not able to conclude that you are operated exclusively for exempt purposes. You cannot qualify for tax exemption because more than an insubstantial part of your activities are not in furtherance of exempt purposes.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

For authorized representatives:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she has not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We will review your protest statement and decide if you provided a basis for us to reconsider our determination. You also have a right to a conference after you submit your statement. If you want a conference, you must request it when you file your protest statement.

You can also ask the Office of Appeals to review your application for tax-exempt status. Your right to request Appeals review is in addition to your right to a conference, as outlined in Revenue Procedure (Rev. Proc.) 2014-4 and Rev. Proc. 2014-9. You must notify us in writing if you want us to forward your case to the Appeals Office. You can find more information about the process and the role of the Appeals Office in Section 7 of Rev. Proc. 2014-9 and Publication 4227, *Overview of the Appeals Process*.

If the person representing you in this process is not an officer, director, trustee, or other official who is authorized to sign for the organization, he or she must file Form 2848, as explained above, and otherwise meet the requirements in Publication 216, *Conference and Practice Requirements*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, any request for consideration by the Office of Appeals, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Street address for delivery service:

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

We sent a copy of this letter to your representative as indicated on your power of attorney.

Sincerely,

Michael Seto
Manager, EO Technical

Enclosure:
Publication 892
cc: