



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: **201526020**
Release Date: 6/26/2015

Date: April 2, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-30; 501.36-03

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 basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 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.

Sincerely,

Director, Exempt Organizations

Enclosures:

Notice 437

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

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



Department of the Treasury

Internal Revenue Service

P.O. Box 2508

Cincinnati, OH 45201

Date: January 22, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Name

C = Name

D = Name

F = Organization

G = Book

Q = State

R = Date

V = Amount

X = Amount

UIL:

501.03-30

501.36-03

Dear _____ :

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

Issue

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You were incorporated under the Nonprofit Corporation laws of the state of Q on R. Your Articles of Incorporation indicate you were organized for charitable, religious, educational and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Code.

Your Bylaws state your assets and income shall only be used to promote the purposes of the corporation which are to offer spiritual, emotional and other support to persons who are grieving. Also, you will assist organized efforts which address the systemic injustices within our society that are the source of grief for persons who are poor and marginalized.

Your initial officers were B, C and D. B and C are husband and wife. You have two full time paid employees. D is one of the paid employees as your Executive Director. As Executive Director he operates and manages the operations with the assistance of an office assistant/bookkeeper. B and C are full time volunteers splitting their time between the publishing and manufacturing activities. Upon our request, you added four unrelated board members for a total of seven.

You began as a ministry/program of F when another non-profit organization donated a small publishing enterprise to them. F is a section 501(c)(3) organization covered by the group ruling issued to a church. The initial focus of the ministry/program was support programs and the provision of resources (provided by the publishing enterprise) for grieving parents whose infants had died.

The congregation that formed F has disbanded. C was the pastor of the congregation. With the disbandment of the congregation and dissolution of F being considered, the members decided that you should be established to take over the prenatal loss support programs.

You current activities are as follows:

- Publishing/Manufacturing – 75%

You publish and/or manufacture books, DVDs, ceramic items and other resources relating to loss. Items are offered for retail sale to the general public through your website, national bereavement conferences and other events. Items are sold wholesale to book stores and at discounted rates to hospitals, nursing homes, funeral homes, counselors and other entities at larger quantities.

- On-Line Newsletter – 3%

You publish a monthly online newsletter with articles and helpful tips for persons who are grieving.

- Hosting Grief Support Groups – 3%

You provide meeting space and leadership training for several volunteer groups for parents who have experienced grief.

- Leadership Training – 1%

You provide training to selected persons to become leaders of support groups and other grief related activities.

- Offering Space to Non-Profits – 2%

Your provide meeting space free of charge from time to time to non-profit community groups that promote peace, compassion, justice and the common good.

- Serving the Poor – 14%

You sponsor and manage a free weekly meal served by volunteers to approximately 100 homeless and other low-income persons.

- Providing Housing – 2%

You offer communal housing.

You indicate you select materials to print or publish based solely on their perceived usefulness to persons who have suffered loss or to professionals who work with grieving persons. Your online catalog features over one

hundred book and resource titles, media such as DVDs and CDs, personalized cards (i.e., death announcements, event/holiday cards, etc.), specialty items like bookmarks, stuffed animals, and t-shirts, as well as clearance items. You arrive at the listed price for each item by doubling the actual cost of production which allows for offering discounts for bulk orders and for individuals/groups that might have difficulty paying full price. You indicate the wholesalers discount is 40-65% and the discount is 10-40% for churches, professional persons and support groups.

You provided the following breakdown of publishing sales:

% of Total Sales	
Hospitals and others	15 %
Wholesale distributors	81 %
General Public	4 %

You only print or publish materials for which you have copyrights. You list three titles for which you paid royalties during your first year of operations. The majority of publishing sales (books, DVDs, etc.) are from the sales of G, a title of which your Executive Director, D, and co-founder, B, are co-authors. Royalties were received by both B and D during your first year of operations which represent a 25 cent per unit sold royalty. Another title sold is authored by B entitling her to a 10 cent per unit sold royalty.

During your first full year of operations you sold over 8,000 units of G books. Over 82% of your book sales were the G books, both English and Spanish versions. You estimate approximately 300 books/resources are given away annually. The value of the books given away constitutes less than 1% of your overall book distribution.

You manufacture ceramic items in your facility. Manufactured items include specialty urns, ceramic hearts, ornaments, and figurines. You only occasionally sell ceramic items that you do not manufacture. In addition to the ceramics that you sell, you estimate approximately 1300 ceramic hearts are given away annually. The amount you give away constitutes less than 3% of your total ceramic distribution annually.

You had total sales of approximately V, 83% of which resulted from publishing, 11% from the manufacture of ceramics and 6% from the miscellaneous items sold. You have approximately X in net income, which is 15% of the total sales revenue.

You describe your housing program as a church related neo-monastic community. The facility is currently owned by F. No assets have been transferred. F allows you to use the facilities and equipment that it already uses in its day-to-day operations. The intention is to transfer real and other property to you by gift when tax-exempt status is granted. Residents are responsible for covering monthly expenses as well as property insurance and taxes. Current residents include B and C, who are your founders and officers. B and C volunteer at the facility. The house currently accommodates eleven individuals. Occasionally, housing will be provided to someone in need on a temporary basis. The manufacturing of the ceramics that you sell are done in the basement of your facility.

Only one percent of your revenue is anticipated to come from gifts, grants and contributions. The rest will be received from the sales of merchandise.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations, and any community chest, fund, or foundation, organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Furthermore, section 501(c)(3) sets forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3).

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (hereafter "regulations") provides in order to be exempt as an organization described in section 501(c)(3), 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). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c).

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit 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." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

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. 72-369, 1972-3 C.B. 245, held an organization formed to provide management and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501(c)(3) of the Code because it is a trade or business ordinarily carried on for profit.

In Better Business Bureau of Washington, D.C. 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 destroy the exemption regardless of the number or importance of truly exempt purposes.

In SICO Foundation v. United States, 295 F.2d 924 (Ct. Cl. 1961), the Court of Claims considered a nonstock corporation that owned controlling interests in several businesses engaged in selling and distributing petroleum products and whose net income was distributed to state teachers colleges for scholarships. The court held that the source rather than the destination of income determines whether the organization earning the income is entitled to tax exemption, and where the primary purpose of the organization is the carrying on of a business, the organization is not exempt from tax even though all of its income is devoted to charitable and educational purposes. The court concluded that although the organization gave its profits to charitable organizations, it did not qualify for exemption under section 501(c)(3) because it was primarily operated to carry on the business of selling petroleum products.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501 (c)(3) of the Code because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax court stated: We must agree with the Commissioner that petitioner's activities constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

In Easter House v. U.S. 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiffs competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code.

In Living Faith Inc. v. Commissioner, 60 T.C.M., 710, 713 (1990), aff'd 950 F. 2d 365 (Cir. 1991) the court said 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 upon 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.
3. The prices set by the organization were based upon pricing formulas common in retail food businesses.
4. The organization utilized promotional material 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

You are not described in Section 501(c)(3) because you are not operated exclusively for charitable purposes. You have also failed to establish your earnings will not inure to your founders, B, C and D. Selling the books for which B and D receive royalties and other manufactured items on your web site at retail prices is not an exclusively charitable activity. Two of your officers will benefit from living at the facility as well as the sales of their books. As such, you are not described in section 1.501(c)(3)-1(a)(1) of the regulations because more than an insubstantial part of your activities involves these product sales. Therefore, you fail the operational test and do not meet the requirements of section 1.501(c)(3)-1(c)(1) of the regulations.

You are not described in Section 1.501(c)(3)-1(c)(2) of the regulations as you have failed to establish your earnings will not inure to insiders. B and C live in your facility for free, other than splitting property tax and utility expenses with the other nine residents. B and D also receive a private benefit by the sales of their books on your website. You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations as you have failed to demonstrate you serve public rather than private purposes. Your earnings inure to the benefit of B, C and D causing you to fail to qualify for exemption.

Your primary activity consists of selling published materials and manufactured ceramic items. You are not described in Section 1.501(c)(3)-1(e) of the regulations as your primary purpose of selling items to the public in a commercial manner does not exclusively further charitable purposes. This activity constitutes a trade or business of a commercial rather than charitable nature. You are similar to the organization described in Rev. Rul. 72-369 because you are operating a business ordinarily carried on for-profit through the sale of

merchandise above cost. A very small percentage of your merchandise is discounted or given away. The books and ceramic products produced and sold are not distinguishable from products sold by commercial entities.

Your publishing sales are primarily with wholesale distributors and then to hospitals and other businesses. You have paid employees who operate and manage your business activities. Your financials show that the income from sales is mainly used to operate the publishing and manufacturing operations. Any wholesale discounts provided appear to be within industry practice standards. Your charitable activities of hosting support groups, training, and publishing an online newsletter require very little financial support and are insubstantial in comparison to the commercial activities. Your substantial publishing and manufacturing activities indicate you are operated for a nonexempt commercial purpose rather than for an exempt purpose. As stated in Better Business Bureau, above, the presence of a single nonexempt purpose, if substantial in nature, will destroy exemption.

The court held in SICO Foundation v. United States, that the source, rather than the destination of income, determines whether the organization earning the income is entitled to tax exemption, and where the primary purpose of the organization is the carrying on of a business, the organization is not exempt from tax even though all of its income is devoted to charitable and educational purposes. Like the organization described in this case, your publishing and manufacturing activities are the conduct of a trade or business and not entitled to tax exemption. The sale of your products, regardless of the reason the products are used, does not constitute a charitable or educational purpose.

You are similar to the organization in B. S. W. Group as the activity of selling books and ceramic items in the manner described is characteristic of a regular trade or business for-profit. Your activities are consistent with the conduct of a business ordinarily carried on by commercial ventures. You are similar to the organization in Easter House because your primary activity is the sale of merchandise on your website. You will compete with other commercial enterprises providing similar services and selling similar items.

You are similar to the organization in Living Faith as you exhibit certain factors evident of non-exempt commercial operations. You sell goods to the public as a substantial part of your activities. You are in direct competition with other retailers, for-profit included, who sell the same products. Your prices are set common to other retail operations. Finally, you are supported substantially through sales rather than charitable contributions. These factors demonstrate a commercial rather than charitable purpose.

Your position

You maintain the organization meets exemption under IRC 501(c)(3). You provide that the provision of your products and services are charitable and educational. You also indicate that your activities are patterned after other religious publishing and manufacturing entities that have section 501(c)(3) status.

Our response to your position

Although the provision of services to grieving individuals could be charitable, the manner in which you conduct your activities is commercial. Your primary activity of publishing and manufacturing products for sale constitutes a substantial commercial activity rather than an exclusively charitable or educational purpose.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes. You fail the operational test. You operate for commercial purposes and your operations inure to the benefit of your founders. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code.

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 hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

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, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

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

Street address for delivery service:

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

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.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892