



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

Number: **201733015**
Release Date: 8/18/2017

Date: May 22, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00, 501.33-00, 501.36-01

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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

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: March 30, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date of formation

C = State

D = Number

E = Number

F = Number

G = Number

H = Number

UIL:

501.00-00

501.33-00

501.36-01

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.

Issues

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

Facts

You were incorporated on B in the state of C. Your Articles of Incorporation state that you are organized exclusively for charitable, educational, civic, community welfare 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 Internal Revenue Code, or the corresponding section of any future federal tax code.

You have three board members. Two of your three board members are related, by marriage.

You will provide intellectual and organizational infrastructure for commercializing innovative products and services. You primarily focus on life sciences and emerging technologies. You plan to partner with universities, research institutions and other nonprofits to identify solutions that enhance commercial and social value and accessibility.

You are a team committed to leveraging emerging business disruptions to improve innovation commercialization tackling the world's boldest challenges. You provide partners the tools, talent and infrastructure to build companies, create quality jobs, and attract investment. You take solutions into the world via partnered initiatives and launching new ventures.

You explain your activities as follows:

1. You strengthen innovation systems by helping establish innovation hubs and launch pods. Specifically, you will advise universities and local governments on establishing strategic innovation districts for research, development, business and education mainly in biomedical sciences, information technology, and clean energy technologies. Your objective is to promote the creation of an ecosystem for innovation supporting the people, academic institutions and corporations in their discovery and development of innovative products and services that can lead to economic growth and diversification, high value employment, and social impact. Your main tasks include the following:
 - Create innovation centers around selected targeted industries and segments,
 - Create programs for the introduction of people and exchange of ideas and knowledge,
 - Support the creation, attraction, and retention of science and technology companies with solid offerings, and
 - Partner with local, regional and international organizations to foster entrepreneurship and help attract funding to support growth and sustainability.

2. You will design new methods to evaluate and commercialize research innovation generated by universities and research organizations. You create actionable tools for sourcing, evaluating, de-risking, developing, and commercializing innovation across sectors and professional silos of knowledge. Your objective is to support both universities and research organizations in streamlining their product development and technology transfer initiatives. Your main tasks include the following:
 - Assemble experts to perform due diligence and evaluate customer discovery and further commercial viability,
 - Conduct initial scientific and technology assessments to perform initial low cost de-risk experimentations,
 - Create prototypes, run concept validations, and run pre-clinical and clinical experiments,
 - Advise on the creation and license of intellectual property, and
 - Advise on the creation of companies (strategic and operating direction, commercialization of assets, etc.).

3. You will design new value-based commercialization models to support access to critical treatments with high global health impact. You provide the design and implementation of pay-for-success value-based commercialization model, increasing access to innovative medicines while reducing overall healthcare costs. You operate as a solution provider to more efficiently align intellectual property and distribution rights, procurement financing, manufacturing, impact monitoring and treatment programs. You work with academic institutions, advocacy organizations, innovators, generic companies, and governments to structure and manage win-win arrangements that expand healthcare access. Some of your main tasks are:
 - Identify the country's health system priorities for value-based commercialization,
 - Develop therapeutic treatment and indication feasibility assessments,
 - Gather and analyze critical health data, and
 - Determine the infrastructure planning required to facilitate access to critical medicines (auditing infrastructure, reimbursement process, healthcare outreach capacity, medicine supply infrastructure, manufacturing capacity, technology transfer, etc.).

4. You will create consortiums of industry and academic organizations to streamline insights and research data that may be useful for accelerating drug discovery and development. You will create an analytics

consortium to improve medicine discovery and development with the participation of healthcare analytics firms, pharma and biotechnology companies, clinical researchers, and universities. The consortium combines solutions for:

- Secure data management with licensing,
- Finance innovations to create a win-win incentive structure,
- Accelerating and cutting costs for preclinical and clinical trial research,
- Integration of supply and vendor offerings, and
- Opportunities to streamline R&D and manufacturing.

Your services are not limited to a narrow audience and you will charge for services based on time and resources applied to each specific engagement and task of activities. You advertise the services you provide on your website.

You set your fees based on the scope, size and nature of the engagement. This includes the amount of work required to assess the feasibility of undertaking a project, the materials and resources required, including internal or external resources, travel expenses, any additional equipment required, accommodations, organizations operating expenses, etc. Basically, you said, the fee to be charged would be based on all general considerations and costs related to the task and assessed prior to taking on any assignment or project.

You submitted a sample consulting agreement (you have not yet entered into any agreements). The contract appears to be a standard consulting contract which legally binds the consultant (you) to perform specific work, as outlined in the Statement of Work as it relates to the contract, for a company.

You will pay third parties to provide assistance securing business and grant development opportunities. Commissions will be between D and E percent. You anticipate that approximately F percent of your revenue will come from gross receipts from services performed and the remaining G percent from gifts, grants and contributions. You also anticipate that approximately H percent of your revenue will be expended on compensation of officers/directors and for salaries.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax to organizations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) 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.

Treas. Reg. Section 1.501(c)(3)-1(b)(1) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part of its activities, in activities which themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" of 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.

Rev. Rul. 69-528, 1969-2 C.B. 127, states that an organization formed to provide investment services on a fee basis exclusively to organizations exempt from federal income tax under Section 501(c)(3) of the Code is not exempt under Section 501(c)(3).

In Rev. Rul. 72-369, 1972-2 C.B. 245, an organization was formed to provide managerial and consulting services to organizations exempt under Section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization enters into agreements with unrelated Section 501(c)(3) organizations to furnish managerial and consulting services on a cost basis. 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). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable.

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court concluded that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

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 IRC Section 501(c)(3) 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 activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit."

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision 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 explain commerciality included:

- 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.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the court laid out the factors for determining whether an organization's activity is of a commercial nature. It said, "Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent

and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include...whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.”

Application of law

You are not exempt under Section 501(c)(3) of the Code because you are not organized or operated exclusively for one or more exempt purposes as required by Treas. Reg. Section 501(c)(3)-1(a)(1).

You fail the organizational test and do not qualify for exemption under Section 501(c)(3) of the Code because your purposes are too broad. Treas. Reg. Section 1.501(c)(3)-1(b)(1).

You also fail the operational test because you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You provide consulting services for a fee based on the time and resources applied to each specific engagement. You do not limit the recipients of your services to any particular group. This is a substantial non-exempt activity similar to a commercial enterprise.

You are like the organization described in Rev. Rul. 69-528 because you provide consulting services for a fee. Also, as explained in Rev. Rul. 72-369, even if you were to limit the recipients of your services to organizations described in Section 501(c)(3) of the Code, providing consulting services at cost is a commercial operation and not exempt within the meaning of Section 501(c)(3).

Like the organization described in American Institute for Economic Research, you have a significant non-exempt commercial purpose that is not incidental to any educational purpose. Your operations are similar to those described in B.S.W. Group and Airlie Foundation, as your services are competing with a number of non-exempt commercial, for-profit companies through your product pricing pattern, compensated staff, and clients you serve.

You are also similar to the organization described in Living Faith, Inc. You make your services available to the public, you are in direct competition with for-profit businesses, you set your prices based on cost, you advertise your services on your website, and you anticipate F percent of your funding will come from fees received for services performed. These are all indicators that you are operating in a commercial manner, precluding you from exemption under Section 501(c)(3) of the Code.

Conclusion

Based on the facts presented, we conclude that you do not qualify for recognition of exemption as an organization described in Section 501(c)(3) of the Code. You fail both the organizational and operational tests. Your consulting activities are indistinguishable from similar activities of an ordinary commercial enterprise. Accordingly, you must file federal tax returns and contributions to you are not deductible under Section 170 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.

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

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892