

Internal Revenue Service

Appeals Office
San Jose Appeals, MS-7100
55 S. Market St., Suite 440
San Jose, CA 95113

Release Number: **201750018**

Release Date: 12/15/2017

Date: September 19, 2017

Department of the Treasury

Employer Identification Number:

Person to Contact:

Employee ID Number:

Tel:

Fax:

Contact Hours:

UIL:

501.33-00

Certified Mail

Dear

This is a final adverse determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Code section 501(c)(3).

The adverse determination was made for the following reason(s):

You are not operated exclusively for exempt purposes within the meaning of Internal Revenue Code § 501(c)(3) and Treasury Regulation § 1.501(c)(3)-1. You are operated for substantial private and non-exempt commercial purposes rather than exclusively for public interests, such as for the benefits of your referee members.

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

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment by referring to the enclosed Publication 892. You may write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

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

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

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

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892

cc:



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

Date: January 13, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B =Date

C =State

D=Name

E= Name

F= Name

G= Name

UIL:

501.03-08

501.33-00

j dollars= Amount

k dollars= Amount

m dollars= Amount

n dollars= Amount

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, in pertinent part, the following purposes:

- A. To provide a safe and structured playing environment for youth participating in ice hockey by providing qualified and competent ice hockey officials.
- B. To provide training and opportunity for referees to officiate youth hockey games.
- C. To encourage confidence and growth through experience and extra training in order to be able to handle higher level youth hockey games in the future.

You provide qualified referees to officiate for hockey associations primarily to D which is a division of E, an affiliate of F. You are a membership organization. You assign your member referees to appropriate games

which they are qualified and collect fees for these services. In turn, the member referees receive payment from you and are issued a Form 1099.

Members must:

1. Be a person who has demonstrated to your evaluating committee and your general membership his or her quality as an active working referee. (Active is defined as having worked a sufficient number of games as determined by the executive board.)
2. Successfully complete the appropriate test for the current season and be certified by F.
3. Pay initiation dues and annual dues of j dollars.

Your officers consist of a president, vice president, treasurer, a secretary and an assignment secretary. The president, vice president, and secretary receive annual compensation of k dollars. The treasurer receives m dollars, while the assignment secretary receives n dollars.

The president's duties include acting as a co-negotiator along with the assignment secretary for all contracts as advised by your board, soliciting new business and along with the vice president auditing the treasurer's records.

Your treasurer is accountable for all the funds received by you and must:

- Send out all billing for services rendered to appropriate associations based upon information received from the assignment secretary.
- Pursue any accounts receivable.
- Send checks for services rendered to all members within one week of receipt of vouchers.

Your assignment secretary spends 10-20 hours a week on his duties which consist of:

- Assigning games to all members for which they are qualified.
- Acting as the co-negotiator, along with the president for all contracts with advisement of your board.
- Penalizing himself the amount per referee in the event if he incorrectly assigns a game and such game is not played. Referees shall receive the penalty amount as designated by your board.

In addition, there is G who is one of your members appointed by D and receives compensation of k dollars. He is your representative to E and F in dealing with any business other than fee structure. He and your president handle all complaints about your members. He represents referees in dealing with any protest filed against them.

You are not engaged in any fundraising programs. Your primary source of revenue is contract fees from D while your primary expenses are fees to referees for services rendered to D and compensation to board members.

Other activities consist of providing:

- Educational seminars, a few times per year for up to 300 people.
- Evaluation of levels of expertise for individual referees.
- Education testing of youth hockey rules and procedures to referees.

- Mentorship for individual instructions.
- Other charitable activities to support youth sports.

Finally, your bylaws show that a referee missing a game through his or her fault shall be fined the full amount of that game and referees must follow assignment procedures to receive extra money. Moreover, if a portion of a game is missed by a referee, he or she will be paid the portion of the game fee he or she worked with the remainder going to the other referee. The bylaws also show that any conduct by any member that is detrimental to you shall be grounds for dismissal. The final decision for dismissal shall be made by your executive board.

Law

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable and educational purposes, among others, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides 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 Section 501(c)(3). 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(c)(1) provides an organization will not be regarded as a Section 501(c)(3) exempt organization if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1 (d)(1)(ii) provides an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Revenue Ruling 61-170, 1961-1 C.B. 112., holds that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under Section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Revenue Ruling 72-369, 1972-2 C.B. 245 held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations lacked any donative or charitable element and did not qualify for exemption under IRC 501(c)(3). In addition, the provision of such services constituted commercial services. Furthermore, the fact that the services 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. Finally, the ruling states that an organization is not exempt merely because its operations are not conducted for producing a profit.

Rev. Rul. 80-215, 1980-2 CB 174 describes an organization that was formed to develop, promote, and regulate a sport for individuals under 18 years of age by organizing local and statewide competitions, promulgating

rules, organizing officials, presenting seminars, distributing a newsletter, and otherwise encouraging growth of the sport qualified for exemption under Section 501(c)(3) of the Code.

In Better Business Bureau 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 Section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under Section 501(c)(3) of the Code 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, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical Section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from 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." Finally, the corporation did not limit its clientele to organizations that were Section 501(c)(3) exempt organizations.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F.2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

Application of Law

You are not as described in Section 501(c)(3) of the Code because you do not meet the operational test as per Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You do not meet the provisions in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operating for the non-exempt private purpose of providing employment services to member referees. You schedule members to referee games for which they are qualified, collect payment for them and then issue those members a Form 1099. This non-exempt purpose is substantial and precludes you from exemption.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), because you are a membership organization operating for the private interest of your member referees. The scheduling of games for your

members, and the distribution of your income as payments indicate that your activities primarily benefit your members.

You are like the organization described in Revenue Ruling 61-170. Your activities are primarily directed to arrange employment for members. In addition, like the organization in the revenue ruling, your membership is open only to specific professionals who meet particular requirements and continued membership in your organization depends on members maintaining specific certifications. Furthermore, you are governed by professional referees without public participation. Finally, like the organization in the revenue ruling, public support is negligible because referee fees and membership fees fund your activities.

You are similar to the organization described in Revenue Ruling 72-369 because the provision of referees' services for negotiated fees to non-profit organizations such as youth hockey on a regular basis is a commercial activity. Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose because you rely on fees from D and then turn the money over to pay your member referees. The referees are subsequently issued Form 1099's.

You are like the organization in Better Business Bureau v. United States because you operate for a substantial non-exempt commercial purpose. This is indicated by the fact your source of income is from contract fees for referee services and your major expenses are compensation and fees to referees for services rendered.

You are similar to the organization in B.S.W. Group, Inc. v. Commissioner, because your activities are serving a commercial rather than a Section 501(c)(3) purpose. For example, you schedule and assign member referees to various games and collect the fees from the games to pay your member referees. Your only income is from members who in turn receive these services. Like the court case, you are operating similar to a trade or business ordinarily carried on by commercial ventures.

Similar to the organization in Easter House v. U.S., you are operating for a business purpose rather than the advancement of charitable or educational activities because you are primarily providing member referees paid employment. Your only source of income is the fees you charge the various organizations for each game. By matching members to jobs where they are paid, you are engaging in a business.

Your position

You state you are educational because you provide educational seminars three to four times a year, you provide training for individual hockey referees year round, you provide education testing of youth hockey rules and procedures to referees and you provide mentorship programs for individual instruction. You state you provide a direct benefit to youth hockey. You believe you are like the organization described in Revenue Ruling 80-215. The revenue ruling describes an organization, which was formed to develop, promote, and regulate a sport for junior players, and to promote sportsmanlike competition for junior players in a particular state. It was comprised of affiliated individual associations, clubs, leagues, and teams and provided a framework for protests, appeals, and procedures. It also distributed a newsletter, and otherwise encouraged the growth of the sport throughout the state. Finally, you listed names of numerous organizations you believe operate like you which received exemption under Section 501(c)(3).

Our response to your position

You failed to provide any additional information from which it can be concluded that your activities exclusively further or advance a purpose described in Section 501(c)(3). You are not similar to the organization in Rev.

Rul. 80-215 because you were not formed to develop, promote, and regulate youth hockey. You were formed to provide youth hockey leagues with certified hockey referees to perform referee services for fees. Although you provided the names of organizations exempt under Section 501(c)(3) whose operations you believe are like yours, you have the burden of proving that you satisfy the requirements for tax exemption. Similar to the organization in Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), you have failed to provide enough information to prove to us that you are operating exclusively for purposes described in Section 501(c)(3). Further, determinations are based on the very facts and circumstances contained within each individual application that may vary between organizations.

Conclusion

Based on the facts and information submitted, you do not meet the operational test for exemption under Section 501(c)(3). You provide your member referees officiating assignments and receive contract fees for these placements. You then pay these fees to your members, thereby operating for the private interests of your members. You also operate in a commercial manner because you provide a service for a fee and the fee charged is not substantially below cost.

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