



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

Release Number: **201918017**
Release Date: 5/3/2019

Date: February 6, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00; 501.33-00

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.

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

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*

cc:



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: Nov. 30, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = Third Party Software Program

E = Third Party Information Website

x percent = percent

UIL:

501.03-00

501.33-00

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 formed as a corporation on B in the state of C. Your Articles of Incorporation state that you are organized and operated exclusively for charitable purposes.

In your statement filed with your state agency regarding your trade name, you state the kind of business transacted or activities conducted under your trade name is a: "...donor-advised fund collecting donations for public charities." Your activity includes having end users input their personal information, including their credit or debit card information, to your application (app). Your app then links to the end user's purchases made through their credit/debit card and rounds their purchase up to the nearest dollar amount, with the increased amount being added to the end user's account that has been set up by you. The end

users will recommend qualifying charities from your app. You state you will consider the end user's recommendation, and if satisfied, will distribute the funds in each end user's account to qualifying public charities. You also state you have full legal ownership and control over the funds in each end user's account.

You opine it is your general policy to distribute funds monthly. But situations may happen that allow you to lengthen this period including: determining if there are insufficient funds to distribute, or additional time is needed to determine if a grant is proper or additional time is needed to aggregate with other funds to meet the minimum donation.

You assert you will use third party software programs (such as D) that integrate with credit card companies and financial institutions to facilitate transactions. Further, D will charge you a "slight transaction fee" which is part of your x percent cost you charge to your end users.

In addition to your app, you also have a website which will operate similarly. Your website will solicit financial information from end users including debit card and credit card information. Users of the website will then round their purchases up to the nearest dollar amount and the excess amount will be distributed to a qualifying charity.

Criteria for not distributing funds to an end user's recommended charity include, but are not limited to:

1. It would result in a "more than incidental benefit" to the user or to you as that term is used in Section 4967 of the Code, or
2. The public charity requires a minimum donation, and the aggregate funds of all end users recommending donations to such public charity do not reach the minimum donation, or
3. The charity is not a 501(c)(3) public charity in good standing.

You state if funds are unable to go to the end user's recommended charity, you will distribute them to another charity. You will also adopt procedures similar to expenditure responsibility under Section 4945(h) to avoid any excise taxes for not exercising said responsibility.

While holding end user's funds before they are distributed to a charity, you state you will deposit said funds in an interest-bearing account that you own.

You indicate individuals must sign a Donor-Advised Fund User Agreement that names a charity or charities to which they wish to contribute. You will determine if the selected charities qualify for exemption by confirming their status via IRS submissions and/or E, which is a third-party information service website that specializes in non-profit reporting requirements. After you have approved a charity to receive funding, individuals will be able to make contributions to accounts they create. You state you will own and control these accounts.

The revenues you earn will be generated from three sources. First, funds collected from individuals who use your mobile application, will be charged a fee of x percent. Second, funds received from individuals who use your app will be placed into an interest-bearing account, generating interest revenue for you. Third, you will receive advertising revenue from space you reserve on your mobile application. The revenues collected will be used to pay for your operating expenses. You project that there will be no salary expenses in the near future.

You state your website will have a place where potential donors may sign up and contribute funds. In addition, you will pay for lists of individuals who have donated to charities in the past. You will then send emails to these individuals in order to create national awareness and solicit donations.

An additional information letter regarding your activities was issued to you requesting copies of your website pages and application pages. We made several attempts to collect the requested information, including extending the response due dates. However, a complete response to our request was not forthcoming. Without reviewing copies of your website and app, you have not established to our satisfaction that you are not organized and operated for private interests. In addition, the information that was submitted was not signed under penalties of perjury.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure 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(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 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

Revenue Procedure 2018-5, 2018-1 I.R.B. 233, Section 3, states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application. Section 4.06(2) of the revenue procedure requires a penalty of perjury statement on all responses to requests for additional information. Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy v. Commissioner, T.C. Memo. 1982-97 provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

Application of law

A ruling on exempt status is based solely on facts and representations in the administrative file. You have not provided supporting documentation to establish you meet the requirements of Section 501(c)(3) of the Code. Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3).

Based on the information we have, you do not meet the operational test under Section 501(c)(3) of the Code because you have not shown you are operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You have not demonstrated how your fee for service model furthers charitable purposes. Your activities will be limited to providing an avenue for individuals to make donations to their selected charity via credit/debit card purchases. You have not established how your activities will meet the definition of the term charitable as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(2).

Without providing the information requested such as print-outs of your website and application, we cannot state with certainty that you have established you are not organized or operated for the benefit of private interests such as your founder or third parties involved in your operations such as D. (see Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii)). Your response to our request for additional information was not signed under penalties of perjury as required by Rev. Proc. 2018-5, Sec. 4.06(2).

You have not submitted sufficient information establishing you are operated exclusively for 501(c)(3) purposes. (See Universal Life Church, Pius XII Academy, La Verdad, New Dynamics Foundation and Ohio Disability

Association). You did not respond to questions that would assist us in determining how you would further charitable purposes. You did not submit copies of the application site or your website. You did not provide the names of the individuals who are on your Fund Review Committee. You did not submit a list of the organizations to whom you will distribute the donations. Therefore, there is not sufficient documentation to establish that you are exempt from taxation as required by Section 501(c)(3) of the Code and Revenue Procedure 2018-5. As in Universal, you have the burden of establishing that you qualify for tax exemption.

In Pius, La Verdad, and New Dynamics, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. Because you failed to provide sufficient details in your initial application and the additional documentation you provided did not meet the statutory and regulatory requirements for exemption, you have not established that you meet the requirements for exemption under Section 501(c)(3) of the Code. As provided in New Dynamics, any gaps in the administrative record will be resolved against the applicant. Similarly, in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. You did not provide supplemental information; therefore, we are unable to determine that you qualify for exemption.

Conclusion

Based on the information submitted, you have failed to establish that you are operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income tax regulations. Therefore, based on the administrative record, you fail to qualify for exemption under Section 501(c)(3).

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 6-403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 6-403
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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892

cc: