



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201443021**
Release Dates: 10/24/2014
Date: July 29, 2014
UIL Code: 501.32-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Required To Be Filed:

Tax Years:
All

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, 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 Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Tamera Ripperda
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: June 4, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Name
C= Website Name
N = Company Name
O = State
P = Date
Q = Date
T = Device
x=Number
y dollars=Amount

UIL:

501.32-00
501-32-01
501.33-00

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

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

Facts

Prior to your formation, your founder and only director, B discovered a new development in current hydroponics technology in which he has a patent pending called

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the T system; the T system is a soilless growing process, which can run without conventional power and can aid in growing food in impoverished regions of the world where fertile soil and clean water is scarce. You demonstrated the T technology to a horticulture expert who advised you that global starvation cannot be solved in one lifetime but the use of your technology can prove it is possible. The expert suggested you shrink the system into a commercially viable stand-alone system and use the proceeds to fund the larger system. B formed you to further the research and development of the T system and to obtain benefactors to invest in his invention.

You were incorporated in the State of O on P. Your Articles of Incorporation state "The specific purpose of this corporation is to eliminate world hunger". After review of O's Secretary of State website, it was found that you are not in good standing. Since your formation, 80% of your time has been dedicated to prototyping and working with the manufacturer to bring the stand-alone T to market. You have been working closely with an engineer and marketing agent to stand alone T which is being manufactured overseas. B has a for-profit company, N which markets and distributes the T stand-alone system.

You currently use the website, C and have a link to N's website for purchasing the T stand-alone system. You stated that you do not want the public to make any distinctions between you and N and that you want the general public to look at the entities as being symbiotic because you want people to know that when they purchase the T stand-alone system from N, the proceeds are going directly to building food machines to feed the starving.

The website also states that for every x systems sold, N will donate a stand-alone system to you to get it to the places that need it most. In addition, N will donate x% of its sales to you for the development of the T farm system. The web site C further states: "N has the best tool in the world and but B needs your help in getting there. By donating, you help in the packaging and shipping of T to regions of the world that can use T to grow their own food".

Once a prototype of the T farm system is completed, it will be tested in a hostile region of the world. Two expert scientists/horticulturists have committed verbally to getting the machine working at its optimal ability.

The T stand-alone systems are publicized through the website C, wholesale vendors and home and garden shows.

Besides using his personal resources, B has borrowed funds from private investors to finish the stand-alone T system through N and has spent about y dollars for injection molds, website design, engineering, and legal fees.

You wrote you have had zero income for the past 3 years and have not filed any annual returns. You subsequently were automatically revoked for not filing your annual returns for a consecutive three-year period.

Law

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

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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 Income Tax 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that 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 subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of 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.

Section 1.501(c)(3)-1(d)(5)(iii) of the regulations provides that scientific research will be regarded as in the public interest:

- a) If the results of such research (including any patents, copyrights, processes or formulas) resulting from such research are made available to the public on a nondiscriminatory basis;
- b) If such research is performed for the United States or any of its agencies or instrumentalities or for a state or political subdivision thereof;
- c) If such research is directed toward benefiting the public.

In Rev. Rul. 65-1, 1965-1 C.B. 226, the Service considered an organization, which promotes and fosters the development and design of machinery in connection with a commercial operation, and in connection therewith has the power to sell, assign, and grant licenses with respect to its copyrights, trademarks, trade names, or patent rights.

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The Service concluded that the organization does not qualify for exemption from federal income tax under section 501(c) (3) of the Internal Revenue Code of 1954.

Revenue Ruling 69-632, 1969-1 C.B. 120, a nonprofit composed of members of a particular industry to develop new and improved uses of existing products of the industry is not exempt under section 501(c)(3) of the Code. The association's members select research projects in order to increase their sales by creating new uses and markets for their product. The primary purpose of the association's research is to serve the private interests of its creators, rather than the public interest.

In P.L.L Scholarship v. Commissioner, 82 T.C. 196 (1984), an organization which operated a bingo at a bar for the avowed purpose of raising money for scholarships was denied exemption under Section 501(c)(3) because it was operating for private interests. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. A realistic look at the operations of these two entities, however, shows that the activities of the organization and the bar were so interrelated as to be functionally inseparable.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), cert. denied, 497 U.S. 1005 (1990), the court held that when a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.

Application of Law

You are not as described in section 501(c)(3) of the Code because you are not exclusively operated for charitable or educational purposes.

You are not as described in Section 1.501(c)(3)-1(a)(1) of the Regulations because you fail the operational test.

You do not meet the provisions of Section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. Providing funding to develop B's patented technology into marketable devices to be marketed, distributed and sold by N serves a substantial private purpose.

As described in section 1.501(c)(3)-1(c)(2) of the Regulations, you are not operated exclusively for exempt purposes because your net earnings inure to the benefit of B. For example, you were formed to fund the research and development of marketable devices using B's patented technology which will be sold by B's for profit business, N. In addition, your board consists of one person, B who controls all aspects of your operations and has a for profit, business, N, who will benefit from your operations.

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You are not as defined in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you are operating for the private interests of B and N. You are operating to confer the advantages of tax-exempt status to B as shown by the fact that your tax exemption will enable B to apply for grants to develop his inventions which are marketed and distributed through N. Furthermore you stated you want the general public to make no distinctions between you and N. This also demonstrates you are primarily serving private interests.

You do not meet the provisions of Section 1.501(c)(3)-1(d)(5)(iii) of the Regulations. Any scientific research you are carrying on is not primarily conducted in the public interest. Your activities of funding the research and development of B's patented technology into marketable products serves private interests.

You are like the organization in Revenue Ruling 65-1. Your activities of funding the research and development of B's ideas into products do not constitute "scientific research" within the meaning of section 1.501(c)(3)-1(d)(5) of the regulations. In addition, your purpose of obtaining grant money to develop B's ideas is directed to benefit B and N and any public purpose is incidental.

You are comparable to the organization in Revenue Ruling 69-632 because you were formed to serve the private interests of your creator B. Although your activities may result in new processes that benefit the public, this benefit does not overcome the benefit to B and N which violates the absolute inurement prohibition.

You are also similar to the organization described in P.L.L Scholarship Fund. You and N are controlled by the same individual, B. Your functions and management are so interrelated with N that you are functionally inseparable from N because without you, N is not able to obtain funding.

You are comparable to the organization in Church by Mail because you and N are controlled by the same person. Moreover, N benefits substantially from your operations.

Conclusion

You do not qualify for exemption under section 501(c)(3) of the Internal Revenue Code, because you do not meet the operational test of Reg. 1.501(c)(3)-1(c)(1); you are not operating exclusively for exempt purposes. Your net earnings inure to the benefit of B directly as well as through N. You are also operated for the purpose of benefiting N, a private related business and you serve a private rather than a public interest.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a protest statement explaining your views and reasoning. You

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must submit the protest statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your protest statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892.

Types of information that should be included in your protest statement can be found in Publication 892. The protest statement must be accompanied by the following declaration:

“Under penalties of perjury, I declare that I have 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.”

Your protest will be considered incomplete without this statement.

If an organization’s representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code Section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

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Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

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

Deliver to:

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

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Tamera Ripperda
Director, Exempt Organizations

Enclosure: Publication 892

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