



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201504017**
Release Date: 1/23/2015

Date: 10/27/14

UIL: 501.32-00; 501.32-01; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Required To Be Filed:

Tax Years:

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: 9/28/14

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Name
C = Name
D = Name
E = Name
x = Date

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

You were formed via the adoption of Bylaws as an unincorporated association on date x. Your Bylaws state B and D are your owners, each holding a 50% ownership interest. B and D have the right "...to open revolving accounts and in debt [sic] the company in any manner that will be beneficial to its growth." B and D as owners shall have the option to change the company to a publicly traded company.

The Bylaws also state that until a board of directors is appointed all decisions and legal affairs will be handled by the owners. After a board is formed, your members will handle all the day to

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day aspects of each company attached to the parent company. Even after the board is formed, all funds and major transactions must be approved in writing by your owners. Payroll checks, fund transfers and real estate purchases must be approved by the owners and checks initiated and signed by the owners unless otherwise stated.

The Bylaws continue by stating that the owners shall have the right to appoint three members to the corporate board. These members can be appointed at any time that the owner desires. The Bylaws further indicate B as President, C as the Treasurer, and D is the Secretary.

The attachment to your Form 1023 states you are family business. B, C, D and E are related. D is the mother of B, C and E. The attachment also states B is the executive director, E is the secretary of the company, and C is the trustee of the company.

You said each individual will have a team of individuals that will help create an Individual Service Plan (ISP). Each ISP outlines and authorizes those specific services to meet those needs. Individuals' needs are reassessed at least annually. You provide therapeutic and assistive services to your clients. You set realistic goals with the help of your therapeutic staff: to improve speech, enhance walking abilities, feed themselves, and perform their own personal care. You plan on providing computing training and a literacy program based on each individual's needs.

You provide housing for your clients with developmental disabilities. The criteria for housing is that it is certified for clients with developmental disabilities. Your housing is considered affordable to a significant segment of the elderly or handicapped population. Your community "...has average house rates less than \$70,000 which estimates the affordability of housing for our clients."

Your plan is to sustain a grant to help supplement the cost of maintaining the criteria of the business when a resident is unable to pay their regular charge. Most of your clients will be receiving state funding through Medicaid.

You will provide daily living skills, including meal preparation, laundry, house cleaning, home maintenance, money management, and appropriate social interactions. Self-care skills include bathing, showering dressing, toileting [sic], eating, and taking prescribed medications.

You also submitted a Schedule A with your Form 1023 indicating you are a church with around 30 members. You did not provide the necessary attachments. You also submitted a Schedule F with your Form 1023 showing you are providing housing to the handicapped but again did not provide attachments.

You provided proposed budgets of all zeros for four consecutive, unspecified years on your Form 1023. You asked us to select the correct public charity classification.

Law

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private

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shareholder or individual.

Section 1.501(a)-1(c) of the regulations provides that the terms "private shareholder or individual" in Section 501 refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the regulations 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.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law

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.

Revenue Procedure 2014-9 Section 4.01 provides that the Internal Revenue Service will recognize the tax-exempt status of 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. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1979), the Tax Court held that although separate requirements, the "private inurement" test and the "operated exclusively for exempt purposes" test often overlap substantially. The petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court Held that petitioner had not shown it was operated exclusively for exempt purposes or the no part of its earnings inured to the benefit of its officer.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the Sixth Circuit court found that although the organization did serve religious and charitable purposes, it existed to serve the private benefit of its founders, and thus failed the operational test of section 501(c)(3). Control over financial affairs by the founder created an opportunity for abuse and thus the need to be open and candid, which the applicant failed to do.

Application of Law

You are not as described in Section 501(c)(3) of the Code because you are not organized and operated for charitable purposes.

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

You do not meet the requirements in Sections 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your formation document does not limit your purposes as required in Section 501(c)(3) of the Code; in addition, your formation document does not have a dissolution provision as required by Section 1.501(c)(3)-1(b)(4), which also causes you to fail the organizational test.

You are not described in Section 1.501(c)(3)-1(c)(2) of the Regulations because you are not operated exclusively for exempt purposes since your net earnings inure to the benefit of private shareholders or individuals as defined in Section 1.501(a)-1(c). This is evidenced by the fact you are structured as a family business with B and D as 50% owners. Individuals holding an ownership interest in you inures to their benefit.

You are not as described in Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations because you are serving the private interests of B and D. This is indicated by the following:

- The Bylaws state B and D are your owners;
- The owners shall have the right to appoint three members to the corporate board;
- The Bylaws state that until a board of directors is appointed all decisions and legal affairs will be handled by the owners;
- Even after the board is formed, all funds and major transactions must be approved in writing by your owners;
- Payroll checks, fund transfers and real estate purchases must be approved by the

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owners and checks initiated and signed by the owners unless otherwise stated.

You also do not meet the provisions in Revenue Procedure 2014-9 because you failed to provide budgets as well as sufficient information about your operations. You submitted a Schedule A with your Form 1023 indicating you are a church with around 30 members without any attachments. You also provided a Schedule F with your Form 1023 showing you are providing housing to the handicapped but again did not provide attachments.

Like the organization in Western Catholic Church v. Commissioner, the information you submitted shows you are serving a private, rather than public interest, as described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Even if you did serve some level of charitable purposes, you were formed as a for-profit organization to benefit your founders, much like the organization described in Basic Bible Church v. Commissioner, precluding you from exemption under section 501(c)(3) of the Code.

Conclusion

Based on the facts presented above, we conclude, you are not organized and operating exclusively for exempt purposes as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. You are operating a business which benefits B and D. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

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 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

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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.

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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