

Internal Revenue Service
Appeals Office

Department of the Treasury

**Employer Identification
Number:**

Release Number: **201726013**

Release Date: 6/30/2017

Date: April 7, 2017

Person to Contact:

ORG

Tax Period(s) ended:
All years

UIL: 501.03.00

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 is made for the following reason(s):

You are a successor organization to a for-profit business. You propose that your principal activity will involve the production and sale of pipes at market rates for construction projects. You have not demonstrated that you will be operated exclusively for charitable, scientific, or other exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code. Specifically, you have not shown how your proposed activities will lessen the burdens of government or otherwise further charitable purposes. More than an insubstantial part of your activities was not in furtherance of an exempt purpose

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,

Joseph K Phegley
Appeals Team Manager

Enclosure: Publication 892



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

Date: September 14, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Organization
C = Board Member
D = Board Member
F = Organization
G = Organization
H = Organization
J = Organization
K = Organization
L = Organization
M = Organization
N = Organization
P = State
Q = Organization
R = Organization
S = Organization
T = Organization
W = Organization
x = Date

UIL:

501.03-00

501.36-00

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 on x as a corporation in the state of P. You do not have Bylaws.

You are successor organization of a for-profit company, B, that was unable to secure funding. C, who is your President and Director, is also President and Director of B. D, C's wife, is your Vice President and Director and holds the same positions in the for-profit, B. C and D are each 1% shareholders of B. Both C and D currently volunteer their time, but you anticipate they will both be compensated after you receive funding. You do not have a conflict of interest policy at this time. You may use a non-fixed compensation arrangement in the future and you believe that at some point a bonus program might make sense. You do not have any current plans for such a program, but would apply your future conflict of interest policy to the creation of this program, should you choose to enact one.

The for-profit organization, B, undertook a great deal of development work, tried several business models through the years, and made numerous attempts to seek venture capital. B simply did not fit within the high tech or new pharmaceutical breakthrough drug mold venture capital firms were looking for. You have taken over the activities of B because it was unable to secure funding and it became apparent that a non-profit would be in better position to work with government entities on publicly funded projects. B remains in existence, but is now idle. Both C and D will remain as Directors and Officers until such time as a new purpose or other determination is made regarding the future of B. There are no current plans for you to have a business relationship with B.

You indicated the President of the United States, the Speaker of the House, and others have called for increased focus on infrastructure, specifically on crumbling bridges. Therefore, you contend that your ultimate purpose and core focus will be charitable, with your main beneficiary being federal, state, and local government agencies. Within your abilities, you will partner with the public, government, and businesses in rebuilding crumbling roads, bridges and highway overpasses. You will assist in recovery efforts for disaster relief for hurricanes, floods, tornadoes and earthquakes by building and replacing bridges in weeks instead of months or years.

You submitted a description of your pipe manufacturing system and machinery that will be utilized to reshape pipe. With this equipment, corrugated metal pipe can be made in much larger sizes than have ever been produced before. The machinery has not yet been produced and pipe products of this type, in the size range needed, are not commercially available today. C has two patents that he is allowing you to use free of charge regarding the manufacturing of the pipe.

During your first two years you consider your purpose to fit within the "scientific" category, as prototype machinery must be built and tested before you can pursue your "charitable" purposes. For the scientific endeavor, your research will result in encouraging economic development throughout the United States. You state that it will save time and money, thereby lessening the burden of government and allowing more infrastructure work to be done throughout the United States. The prototype machinery, after testing, will be placed into service making very large corrugated metal pipe. The pipes needed to make a highway overpass can be made and arched in less than one week. You will provide a very large diameter pipe product that is not currently commercially available. The cost of these pipes represents a fraction of the cost of traditional methods. Standardized design and installation methods will greatly reduce engineering requirements. This should result in more projects getting the green light, thus employing more workers. Work on these projects will be far less

disruptive to the environment and local economies. Projects will be scheduled to take full advantage of the time savings.

You explain that, "Pursuing our exempt purposes will result in "economic development" benefiting the government and local communities, providing jobs, with fewer disruptions. In addition to overall lower project costs, further reductions will be found in reduced engineering costs, lessening the burden on government. Current bridge and overpass construction projects require months and a hundred thousand dollars or more of engineering, site survey and testing work. Q's approach is more, or less a pipe install project. It does require some engineering, but by comparison, the work is minimal. These reductions go right back into the economy in the form of more projects."

You would consider an ideal first test project to include working with the R or S to build an actual bridge, overpass, or disaster relief structure. The results of your research and the machinery developed will be dedicated to public purposes as required by your Articles of Incorporation. With this in mind, you will retain ownership and control over any patents, copyrights, processes, etc., resulting from this research. You will need to set up facilities to build equipment and maintain a staff including engineering and manufacturing personnel. This will be an ongoing need to fulfill your purposes as this equipment will be needed in more than one location at the same time.

The costs of replacing or building a new highway overpass using your approach could be as little as one fourth the current costs, thereby enabling you to stretch public funds further. You would be able to build more projects and employ more workers. After building your machinery which is required to conduct your activities, you will begin working with federal, state, and local agencies, civil engineering firms, and businesses to identify suitable projects. You will provide the pipe portion of the project. Agencies will include your pipe product as part of the engineering plans in suitable projects and will release requests for quotations as they would with any other projects. Qualified contractors will present their bids to the government agency and the agency will in most cases accept the lowest bid. The project will proceed in the same manner as any other similar project. You will operate much like a sub-contractor on the project, building your portion of the project in coordination with the contractor that won the bid. The agency may pay you directly, or may have the contractor include the costs for your contribution as part of its bid based on local rules. In addition to providing the agency with a better solution to meet its needs, in many cases you will be able to solicit funding from the surrounding community specifically for the project, enabling a further reduction of costs in those situations. With community support you may be able to help with additional infrastructure needs allocating funds for street overlays, water lines, sewer lines and more.

You will provide your pipe portion of projects at your cost plus a reasonable profit. The profit will go back to you to for your activities. Each time you build a pipe approximately % of the cost will be in the pipe product itself. You estimate % of your efforts will be allocated to work on infrastructure once you begin completing projects. The remaining % will go to various forms of overhead and fundraising. You will seek grant funds from the R, S, T, foundations, and corporations.

You will replicate your work in the United States around the world. As you gain expertise, you will investigate this further and take steps to make it a reality. You believe the pipe and machinery manufacturing portion of your business will be self-funding at some point and that means in time, you can make machinery available to take outside the United States to help in other countries. This is a long range plan. Perhaps five years or more will pass before you begin to expand your operations. It is not your intention to license, franchise, or otherwise

partner with any other organizations to pursue international efforts. There may be some countries where that is not possible and you will likely avoid those countries.

It is not your intention to simply prove that something can be done. You intend to survive beyond your research and provide ongoing benefit to the public and the government. You intend to sell very large pipe to government agencies to help rebuild crumbling roads and bridges. As time allows, it is likely that you will sell pipe to the private sector as well and profits realized from such sales would be utilized to help fund your ongoing purposes. Regardless of the customer you sell to, the price you sell your pipe product for will be the fair market value of the product. You will provide the pipe portion of projects at your cost plus a reasonable profit. The profit will go back to you. Purchase of this product will not be considered a donation to you.

Law

Section 501(c)(3) of the Internal Revenue Code (“Code”) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational, and scientific purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (“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(c)(1) of the regulations provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities that 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(d)(2) of the regulations defines the word “charitable” as used in section 501(c)(3) of the Code as including the relief of the poor and distressed. The term charitable also includes the erection or maintenance of public buildings, monuments or works, lessening the burdens of government, and the promotion of social welfare by combatting community deterioration.

In Revenue Ruling 60-351, 1960-2 C.B. 169, a corporation is organized and operated on a non-profit basis. It publishes a foreign language magazine containing fiction, poetry, book reviews and articles which it states is of a literary, scientific and educational character. The magazine is available to the general public through regular paid subscriptions. The corporation's income is derived mainly from subscriptions and sales of individual copies of the publication, and some is from advertising and contributions. Its expenditures consist of fees paid to authors for their works, salaries, printing, advertising, shipping packing, postage and other operating costs incurred in the publication of the magazine. It is devoted to publishing a magazine and selling it to the general public in accordance with ordinary commercial publishing practices. It is held that the corporation is not an exempt charitable, scientific, literary or educational organization within the meaning of section 501(c)(3) of the Code.

In Revenue Ruling 66-147, 1966-1 C.B. 137, an organization's specific purpose is to inform the interested public of current developments appearing in scientific and medical literature. The organization employs technical personnel who survey the world's medical and scientific publications as soon as they are published. They select and abstract articles appearing in this literature. The abstracts are compiled in monthly publications

and are distributed free of charge to anyone having particular interest in the subject matter. This organization qualifies for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Rev. Rul. 71-581, 1971-2 C.B. 236, held the operation of a separately incorporated thrift shop to raise funds for a group of specified exempt organizations qualifies for exemption under section 501(c)(3) of the Internal Revenue Code. The organization was formed by a group of nonprofit organizations described in section 501(c)(3) of the Code and all of the organization's profits were payable to these organizations. Substantially all of the merchandise sold by the organization had been contributed and more than half of the work in operating the thrift shop was performed without compensation.

Rev. Rul. 72-369, 1972-3 C.B. 245, held an organization formed to provide management and consulting services at cost to unrelated exempt organizations does not qualify for exemption under section 501 (c)(3) of the Code because it is a trade or business ordinarily carried on for profit.

Rev. Rul. 85-2, 1985-1 C.B. 178, sets forth criteria for determining whether an organizations activities are lessening the burdens of government. The first is whether the governmental unit considers the organization's activities to be its burden. The second is whether the activities actually lessen the burden of the governmental unit. An activity is the burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden. Therefore, Rev. Rul. 85-2 held that an organization that provides legal assistance to guardians ad litem who represent abused and neglected children before a juvenile court that requires their appointment lessens the burdens of government. The law of the state in which the organization is incorporated authorizes, and the local court's rules of practice require, the appointment of a guardian ad litem to represent a child's interest in a proceeding relating to child abuse.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U. S. 279 (1945), the Supreme Court of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 352-55, 360 (1978), the Tax Court determined that an organization formed to provide consulting services on the topic of rural-related policy and program development to tax-exempt organizations at, or close to cost, did not qualify for exemption under IRC section 501(c)(3) as an educational, scientific, or charitable organization. In examining the organization's activities, the court noted that an organization may operate a trade or business and still qualify under IRC section 501(c)(3). "Rather, the critical inquiry is whether [the organization's] primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for [the organization]." This determination "is a question of fact to be resolved on the basis of all the evidence presented by the administrative record." Factors to be considered include "the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits." Furthermore, "[c]ompetition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes." Applying this analysis, the court determined that the organization's services obviated the need for non-profits to employ full-time staff for that function, that the organization's fee was based on the cost of providing services rather than the tax-exempt organization's ability to pay, that the organization realized profit, that the organization's financing was not typical of section 501(c)(3) organizations, and that, in practice, the organization did not limit its services to

You are like the organization in Revenue Ruling 60-351 as you distribute and sell products as a sub-contractor to anyone that wants to use your products. Your income is derived from a markup on the cost of these items to cover expenses. As seen in Revenue Ruling 66-147, the distribution of products free of charge differentiated that organization from operating as a commercial entity. Here, the sale and distribution of your products are in accordance with commercial distribution practices where a purchase is made and the merchandise is marked up and sold. You are similar to the organization described in Rev. Rul. 72-369 because you are operating a manufacturing business ordinarily carried on for-profit.

You are not similar to the organization in Rev. Rul. 71-581. You are purchasing materials to create your pipe. None of your materials are donated. You are then selling the pipe products to government and other organizations at fair market value. All of your work will be performed by compensated employees and revenue from your sales will go back to your organization.

You are similar to the organization described in the B.S.W Group which provided services to nonprofit organizations and was not exempt under section 501(c)(3) of the Code. Your sole purpose is to manufacture and administer the sale and distribution of pipe products. You are dependent on the overhead markup that you charge to operate. The sale and distribution of products on a regular basis denotes the carrying on of a trade or business in a regular manner, similar to the organization in Easter House. You do not qualify for exemption because you operate in a commercial manner rather than exclusively for charitable purposes.

You are similar to the organization in Living Faith as you exhibit certain factors evident of non-exempt commercial operations. You sell goods to the public as a substantial part of your activities. You are in direct competition with other retailers, for-profit included, who sell products. Your prices are set to compete with others. Finally, you are supported substantially through sales rather than charitable contributions. These factors demonstrate a commercial rather than charitable purpose. You are competing with for-profit commercial manufacturers and you said you will be priced competitively. Thus, much like the organization described in Airlie Foundation, supra, you do not qualify for exemption.

Although the sale of your pipe is used to maintain public bridges, the manner in which you plan to provide the pipe through sales does not fulfill the charitable purpose of maintaining public works or lessening the burdens of government under section 1.501-1(d)(2) of the regulations. You are not lessening the burdens of government simply because your pipe will be used on bridges owned by the government. A determination of whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers its burden and whether such activities actually lessen such governmental burden. The fact that you are engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Additionally, just because the President of the United States and Speaker of the House may have called for an increased focus on infrastructure, specifically roads and bridges, does not mean you are lessening the burdens of government by providing pipe for the bridges. Even though your pipe may be cheaper than from other suppliers and may allow the project to be completed in a faster time, you are still selling the pipe at a price above cost for the project. Additionally, a strong working relationship between the government and an organization is strong evidence that an organization is actually lessening the burdens of government. You do not have a strong working relationship with the government. You will be working with the contractor on a project that wins the bid and you will operate much like a sub-contractor on the project. You will not have a close working relationship with the government.

Your activities to not meet the requirements laid out in Rev. Rul. 85-2 for lessening the burdens of government. You indicated the President of the United States, the Speaker of the House, and others have called for increased focus on infrastructure, specifically on crumbling bridges. The fact that you will be engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Additionally, the fact that the President of the United States and the Speaker of the House are calling for an increased focus on infrastructure such as crumbling bridges is also not sufficient to establish that you are lessening the burdens of government. You will not work directly with government authorities to improve a bridge or other structure. You will work with engineering firms and other similar companies who will include your pipe product as part of the engineering plans. You will operate much like a sub-contractor on the projects and will be providing your product at fair market value. You will therefore be operating in a commercial manner and not for a charitable purpose.

You are similar to the organization in Better Business Bureau in which the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Your activity of producing pipe products and acting as a subcontractor is substantial and is an activity that is primarily carried on for the purpose of conducting a commercial business.

Your position

You said you are an exempt organization based on section 501(c)(3) of the Code. You are a corporation that has specifically limited your purposes to the activities described and dedicated your assets to those purposes within your Articles of Incorporation. You stated that 501(c)(3) makes no distinction regarding any specific business or trade and it is clear from existing 501(c)(3) corporations that many businesses and trades are operated by non-profit and for-profit corporations that are essentially the same such as hospitals and colleges. You noted that congress limited the fostering of "amateur sports competition" to exclude "provision of athletic facilities or equipment" within the Code. From a legal perspective this shows that if congress had intended to preclude certain businesses or trades from 501(c)(3) designation, they would have done so.

You stated that your purposes have been clearly described within your application and the trade or business you are discussing is central to your "exempt (charitable) purpose(s)." You explained that crumbling roads and bridges are "public" works infrastructure projects and there may be construction contractors that could and should move from for-profit to non-profit business models. Roads and bridges benefit all of society, and deteriorating roads and bridges affect all forms of commerce, which no doubt results in greater problems for the poor. You said this is also about competition. Organizations such as hospitals and colleges compete in the same markets with for-profit competitors and both non-profit and for-profit organizations, if properly run, make profits.

You referenced an organization that was granted 501(c)(3) status to build and run the light rail system designed for a large city. This helped strike a balance between private and public interests. Depending upon sources, there are 200,000 or more bridges in need of immediate repair or replacement in the U.S. alone. You are going to be part of the solution for this. Just as in the this above-referenced organization, you will work with government agencies and contractors to identify appropriate projects for your revolutionary "old school" approach to replacing/rebuilding bridges and infrastructure.

You also referenced K which sells '

.. " It is a 501(c)(3)

..., fixtures and materials and it operates similar to how F and G operate with respect to clothing and furniture. It says "

There are also 501(c)(3) businesses that rehabilitate or and ones that focus on building (outside the U.S.), and H that also You stated that all of this illustrates that the IRS does extend 501(c)3 status to all sorts of businesses and trades.

You stated the IRS has already determined that the government is a viable recipient of charity. The dissolution clause on page 3 of your Articles of Incorporation is a direct quote from page 71 of Publication 557 and it states, "assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the United States, Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose." The Instructions for Form 1023 on page 2 tells us, "organizations that receive substantial support from grants, governmental units, and/or contributions from the general public" are "public charities." Publication 557 on page 28 discusses "charitable organizations" and tells us such organizations must be organized and operated for purposes that are beneficial to the public interest. Examples include "erection or maintenance of public buildings, monuments, or works" and "lessening the burdens of government." The Instructions for Form 1023 on page 32, Appendix C: glossary of terms, defines "Economic development" with "Organizations formed to combat community deterioration by assisting businesses located in a particular geographic area whose economy is economically depressed or deteriorating." You stated that you specifically fit within this context as well, but you are not focused on one single community.

You made an "expedite request" stating, "The President of the United States, Speaker of the House and others began calling for increased focus on infrastructure, specifically discussing our crumbling Roads and Bridges." Within your abilities, you will partner with the public, government, and businesses in rebuilding crumbling roads, bridges, and highway overpasses and in areas affected by natural disaster. You will assist recovery efforts in disaster relief for hurricanes, floods, tornadoes, and earthquakes by building and replacing bridges in weeks instead of months or years. You stated that if the majority of an organization's support is derived from the government it is a "public" charity

You said your pipe product will be sold for its fair market value regardless of the customer. This is the best way to avoid concerns over quid pro quo contributions. The engineering services you provide and management coordination between the private sector and government concerns are substantial, and very much incidental to your "charitable purposes."

To explain fair market value you stated:

Technically each time we build a pipe approximately % of the cost will be in the pipe product itself, and that pipe will remain in public service for fifty to one hundred years. The funds required to purchase that pipe will come from Public and Government sources. With that said, Q will clearly fit within the Public/Government support guidelines to qualify as a 501(c)(3), "Charitable" organization.

You said that J and L have a "fair market value" for a while M and N is about dollars. You compared your "fair market value" to J and said based on this alone you are a non-profit organization.

You stated that you clearly intend to assist the government's efforts to resolve the problem of crumbling roads, bridges and infrastructure and that you are clearly a "public charity" based on your support coming from public and government sources. You indicated that you will have an impact on economic development throughout the nation, thereby lessening the burden of government. You will work extensively with engineering professionals, public works directors, federal and state departments of transportation, W regulators, etc., to fulfill these purposes and you have the potential for providing real world help working with S and T in the next major disaster as suggested in your expedite request.

Our response to your position

Although you assert that your purposes have been clearly described within your application and the trade or business is central to your "exempt (charitable) purpose(s)," your activities lack any element of charity. You are formed for the purpose of manufacturing a product, acting as a sub-contractor for anyone that would like your product, and selling the product with a substantial mark up. The fact that you would like to sell your product to the government does not make your activity lessening the burden of the government.

You compared yourself to an organization that was granted 501(c)(3) status to build and run the light rail system. However, your operations are commercial.

You said that because no part of your earnings would inure to the benefit of private individuals you qualify for exemption. Private benefit is only one factor to consider. You must also be organized and operated for charitable or other 501(c)(3) purposes.

You further compared yourself to the F and G, as they use revenues generated from sales to fund their operations. However, you are very different than these two organizations. You also referenced H, which
Your operations lack any donative element. You are driven by the manufacture and sale of a product in a commercial manner.

You stated that the IRS has already determined that the government is a viable recipient of charity. Although the government can be a viable recipient of charity, you are not providing charity to the government. You are providing the opportunity for the government to purchase a product the same way any other organization or individual would purchase it. The fact that you plan to receive part of your "support" from the government does not cause you to be a public charity.

You emphasized that your pipe product would be sold for fair market value regardless of the customer. This is the best way to avoid concerns over quid pro quo contributions. You further said your engineering services and management coordination between the private sector and government concerns are substantial. These activities are much like the ones described above in B.S.W. Group. Factors to be considered include "the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits." Competition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes. You serve a substantial, non-exempt, commercial purpose.

You said that because your pricing strategy is more like J and less like M "based on this alone you are a non-profit organization." J, as you know, is not a charity. This is not a basis for exemption.

Your Protest

You indicated that this letter offers an “us against them” approach to the analysis of your application. You said you are not the enemy. You said receiving a favorable determination is more important to the United States than it is to you. You said we make no attempt to understand your position or suggest a compromise. This is “simply a flat denial based largely on misrepresentation.” To illustrate this in real terms you are willing to stipulate certain changes in your proposed operations that should remove concerns as follows:

- You could offer your services at or below cost and require donations if necessary to help cover costs in the communities served.
- You could limit your services to government only, with no private sector sales at all.

You believe this is not the best approach but you will allow us to decide.

You state that you were formed for charitable (and initially scientific) purposes with manufacturing and acting as a sub-contractor being necessary to fulfill those purposes.

You provided an illustration of your solution to typical highway overpasses and bridges. You said our letter implies that all you do is sell pipe, but your illustration shows that the two pipes are equal to the constructed bridge portion of the project. Both are engineering solutions requiring earthwork under, on each end (or side), and pavement to be placed over the top. You referred to this as a revolutionary “old school” approach to replacing/rebuilding bridges and infrastructure. Your application and this letter describe your predecessor organization as being unable to secure funding to make this happen. During your first two years as a not-for-profit, you will secure grant funds to build prototype machinery that will be placed into service after testing. This machinery is not commercially available and there are no competitors offering this pipe.

You assert that this letter erroneously implies you operate in a commercial manner and the statement that “you are not providing charity to the government” appears to suggest the government is not poor, needy and distressed, choosing to ignore the definitions of Section 1.501(c)(3)-1(d)(2). You state that section 1.501(c)(3)-1(d)(2) defines “charitable” as used in section 501(c)(3) to say it “also includes erection or maintenance of public buildings, monuments or works” and this is the focus of all your activities. Even the private sector work (estimated to be less than % of your activities – “as time allows”) was to fund your ongoing charitable purposes directed to public works. You also state that the fact that utilizing your solution will also lessen the burdens of the government is a further charitable purpose as defined in this section.

You state, “It is the government itself that brings to this activity a commercial hue. We are unfamiliar with any other process where the government can implement a public works design, construction method or project where the process does not involve bidding and awarding contracts to various firms. We also believe the IRS to be unaware of any other process as well. We suggested an implementation familiar to this standard process to allow competitive bidding of construction companies, engineering firms, etc. With our organization operating similar to a sub-contractor.”

You state that the commerciality doctrine is not in the Code and you look to the courts for guidance on this issue and find the court says “an organization may operate a trade or business and still qualify under IRC section 501(c)(3)” citing B.S.W. Group, Inc. The quote goes on to say “the critical inquiry is whether [the organization’s] primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business providing net profits for [the organization].”

You said you must take it that your sole activity revolves around the production and sale of pipe technology used for building or replacing bridges, which is required to fulfill your primary purpose of erecting (and or maintaining) public works. Your stated method of accomplishing this purpose generally involves the construction of two very large pipes. You have concluded the most efficient means of providing this solution to the government is by offering that this solution be included in engineering plans and you provide this solution in a manner similar to a sub-contractor on any other construction project. It is your preference to provide this solution at cost plus about % and in time you hope to solicit funding and allocate funds to help with additional infrastructure needs of street overlays, water lines, sewer lines and more. As time allows you might offer the same solution to the private sector to obtain additional funds for your ongoing operations. You state that from this it can be seen that the development, manufacture of machinery, and manufacture and sale of pipe is integral to your primary purpose. You said the primary purpose for engaging in this business as your sole activity is an exempt purpose.

You estimate your solution will save the government about three fourths of the money typically spent using current methods. It will be less disruptive to the environment and local economies. Using current methods the vast majority of projects go unfunded. Simply put, the cost is so high using current methods that government can no longer afford to use them. Generally, the same contractors that would bid on the project using current methods will bid on projects using your method. The result being these contractors should get more work, which is economic development. The current methods will still be used. The solution you offer is not always the best solution and it will take many years before engineers alter some of their choices.

You said that we may choose to strip you of all profit motive and you will abide by that decision, but the result will simply reduce the impact you will have and delay your progress. There will be no actual difference in the way you operate, which points to the hypocrisy and error in our position.

You said we blatantly mischaracterized what you intend to do, stating "You sell goods to the public as a substantial part of your activities. You are in direct competition with other retailers, for profit included, who sell products. Your prices are set to compete with others. Finally, you are supported substantially through sales rather than charitable contributions. You are competing with for-profit commercial manufacturers and you said you will be priced competitively." You state that this paragraph speaks of competition with retailers and commercial manufacturers when logically there can be no competitors for a product that does not yet exist.

You go on to explain that B.S.W Group, Easter House, Living Faith and Airlie Foundation each advised a major factor in denying exemption was that these organizations were in competition with for-profit commercial businesses but this is not true of you, as you established above.

Your next point was that the IRS letter claimed you were conducting the same activities that your for-profit predecessor conducted prior to your request for exemption but that is functionally impossible because your predecessor did nothing more than attempt to seek venture capital, offering the sale of equity (shares) in exchange for a percentage of the company. You are now a non-profit corporation and there are no shares to sell. The predecessor serves as evidence you were unable to be successful as a for-profit company. You state that the overwhelming fact is that grant money is available to non-profits, not for-profits.

You said our letter is "replete with erroneous contentions." You state that no attempt was made to analyze your organization in context with the legal authority as you did and we simply ignore that "charitable purpose" includes "erection or maintenance of public buildings, monuments or works."

Response to your protest

You said you could offer your services at or below cost and require donations if necessary to help cover costs in the communities served. You also could limit your services to government only, with no private sector sales at all. You said you will allow us to decide. Although you assert you “could” offer your services at or below cost and require donations, you have not made any actual changes to the way you plan to operate. In fact, in your protest you continue to describe offering your product for cost plus % markup. Nonetheless, even if there was not a markup, your purpose is substantially non-exempt and not one of an exempt nature, as previously described.

You asserted that the “commerciality doctrine” is not in the Code. You then indicated that it is your preference to provide this solution at cost plus about % and in time you hope to solicit funding and allocate funds to help with additional infrastructure needs of street overlays, water lines, sewer lines and more. Although you said “the IRS may choose to strip us of all profit motive and you will abide by that decision,” the issue isn’t based solely on your profit motive. The purposes for which you were formed are not exempt functions. You were formed for substantial, non-exempt commercial purposes.

You said you were not similar to the organizations described in B.S.W Group, Easter House, Living Faith and Airlie Foundation because these organizations were in competition with for-profit commercial businesses and you are not. However, you will be offering a product that competes with products and methods that are currently used to build infrastructure. Despite your assertion that you are different, you are in fact similar to the organizations described in the above cited cases.

You said that you are not similar to your predecessor for-profit organization because there are no shares to sell. You also said that grant money is available to non-profits, not for-profits. Providing services of an ordinary commercial nature, regardless of whether the undertaking is conducted on a nonprofit basis and is beneficial to the community, does not further a charitable purpose unless the service directly accomplishes a tax-exempt purpose. The sale of goods (e.g., pipe) does not exclusively further charitable purposes because such activities serve a substantial non-exempt, commercial purpose.

You said no attempt was made to analyze your organization in context with the legal authority. You said the IRS ignores that “charitable purpose” includes “erection or maintenance of public buildings, monuments or works.” However, you do not operate for a charitable purpose, as you are simply a manufacturer of a material that you are willing to sell to the government or anyone interested in purchasing it. An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-exempt purpose that is substantial in nature.

Conclusion

Based on the information provided, you do not qualify for exemption under section 501(c)(3) of the Code. You are not organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code because you operate in a commercial manner.

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.

Sincerely,

Director, Exempt Organizations

Enclosure:
Publication 892