



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

Number: **201835009**
Release Date: 8/31/2018

Date:
June 6, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.00-00, 501.32-01, 501.33-00, 501.36-00

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.

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*



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

Date:
April 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Individual
E = County
f dollars = Amount

UIL:

501.00-00
501.32-01
501.33-00
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 meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons stated below.
- Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You filed Articles of Incorporation with the state of B effective as of C as a non-profit corporation. Your Articles state that your purpose is "Transportation and Administration Service and Employment Services." Your Articles are silent regarding the disposition of your assets upon your dissolution. Shortly after your formation, you amended your Articles of Incorporation to indicate your change from a non-profit corporation without stock to a non-profit corporation with stock.

Your Bylaws state that you will issue certificates of stock and that "all corporate powers shall be exercised by or under the authority of D." D is your President and founder. It further states that the "officer of the corporation will be [sic] chief executive officer, president name [sic] D." D and four other individuals are listed as officers and directors. D and the other four individuals will be compensated.

You will provide accessible transportation from any location with affordable rates designed to cater to the needs of everyone in all communities. Your advertisements indicate that you offer daily, weekly, monthly, and corporate rates. You are focused initially on establishing a niche in the local free market of the transportation industry by providing friendly 24 hours/7 days a week transportation, employment and invention services. You

hope to have the capability to service nearly 500 or more customers per month. D researched the target market in your area and the results indicate both business and residential clients intend to use your services.

Your keys to success and crucial factors for the next year are, in your stated order of importance:

- Providing reliable and timely superior service in an effort to gain the satisfaction and loyalty of your highly valued customers
- Initially, marketing your company name and reputation in the E area in a professional and profitable manner. This business will be extended to other municipalities across B and aboard [sic], and
- Effective Management and New Inventions and or Ideas to the Business.

Your objectives are as follows:

- To “introduce and market the unique non-profit transportation services provider technology & solutions that [you] offer to the public” in your region, other regions in the United States and abroad
- Seek to grow your customer base to reach annual sales of over a million dollars the first year, more the second year, then and over two million dollars by the end of year three
- To achieve and retain a loyal customer “with Public or Private and or with For-profit partnership base on Reinvestments of funds by the end of” the third year of operations by “offering safe, and reliable and quality and timely and Inventive transportation Solutions services and a For-profit product of services,” and
- To hire over 10 employees by the end of the second year to service “the high demand of customer needs and services and with board members inventions and ideas of a quality service that offers products and solutions to improving human services and quality of life of all people of America.”

You “introduce a time efficient and Safe affordable, Ride Sharing and accessible transportation alternative Service, in an effort to cater to the busy life styles of men, women, senior citizens and children in E County and neighboring communities” while steadily increasing quality of life. You will also “serve the transportation needs of businesses, including healthcare, manufacturing, and restaurants, among others.”

You assert that your pricing strategy attempts to suggest to the public that you provide quality and value at a reasonable, yet affordable price of your service and maintenance fees. You will provide a reliable and safe quality service that will pay for vehicle maintenance, employee gas mileage, sub-contractor and employee wages, advertising costs, hiring, inventions and company overhead. Pricing is based on a 15-mile radius for one way or a round trip. Each additional mile after the 15-mile radius is a set amount.

Your services include daycare or preschool morning drop off and afternoon pick up. This is a “free” service and you charge only a maintenance fee of less than f dollars per person (round-trip) and it would be further discounted as a weekly rate. You will have group rates within a 15-mile radius. You also offer out of town round trips. These will include a few specific cities and will have a set price. You have set rates per person for one-way trips and a set rate for round trips around town. You said you will offer a discounted rate for passengers over the age of 65, but you did not provide a discount schedule.

In E County, there are three major transportation service companies already established that will serve as your major competition. You will reach your target audience through a variety of marking channels. You will network, advertise, and promote your company in an effort to gain as many customers as possible. You will try some local advertising and use the internet. Your strategy is to “complete the establishment of the mission as an [sic] for-profit leader” that began years ago. Your core customer base will initially be reached through local

radio and word of mouth, as well as the web. As the business grows, you will extend your advertising into television, radio, etc.

You submitted a statement that you are a mentoring program that was started and currently operates behind prison walls and the hope is eventually your program will be found in all neighborhoods in North America. You aim to give advice on proper decision-making, whether its answering questions about gangs, drugs alcohol, abuse, crime and the penalties, and peer pressure. You can also provide paralegal compliance. You will provide further assistance to those who may need to borrow money until their next paycheck. You will have a same day money loan service and any resident of the United States can borrow from you. The money "can be used for bail bonds, bills, security down payment, rent, car payments, clothes, really any loan means." The public can contact D for further details. No other details regarding these programs were provided.

You submitted a "verified statement of D in support of [your] application." It states that this "is a sole proprietorship with D as the sole owner of the business."

You anticipate that approximately 90% of your revenues will come from gross receipts from admissions, merchandise sold or services performed. Your main expenses are for salaries and wages of officers, directors, and employees.

Law

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, 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(b)(1)(i) provides that an organization will be regarded as "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to engage, otherwise that as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3) of the Code.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

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 that 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)(2) provides that the term 'charitable' is used in Section 501(c)(3) of the Code in its generally accepted legal sense. Such term includes relief of the distressed.

Revenue Ruling 72-124, 1972-1 C.B. 145, describes an organization that operated a home for the elderly. It qualified for exemption under Section 501(c)(3) of the Code as a charitable organization because it met the special needs of the elderly for housing, healthcare and financial security.

Rev. Rul. 76-244, 1976-1 C.B. 155, describes a charitable organization that provided home delivered meals to elderly and disabled persons. Volunteers delivered the meals. A nominal fee that was insufficient to cover the costs of the meals and delivery was charged. In some cases, no fees were charged depending on the recipients' abilities to pay. The organization qualified for exemption under Section 501(c)(3) of the Code.

Rev. Rul. 77-246, 1977-2 C.B. 190, describes an organization that was formed to provide low cost bus transportation for senior citizens and disabled persons in a community where public transportation was unavailable or inadequate. Although the organization charged a nominal fee, it was dependent upon contributions and federal and local governmental grants in order to meet its operating expenses. The organization qualified for exemption under Section 501(c)(3) of the Code.

Rev. Rul. 85-2, 1985-1 CB 178, describes 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 and, therefore, qualifies for exemption under Section 501(c)(3) of the Code. The criteria set out for determining whether an organization's activities are lessening the burdens of government are: first, whether the governmental unit considers the organization's activities to be its burden; and second, whether these activities actually lessen the burden of the governmental unit. An activity is a 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. The interrelationship between the governmental unit and the organization may provide evidence that the governmental unit considers the activity to be its burden. Whether the organization is actually lessening the burdens of government is determined by considering all of the relevant facts and circumstances.

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 356-7 (1978), describes an organization whose sole activity was to provide consulting services for a fee to nonprofit organizations. It provided qualified persons to perform research projects for its clients. The fees charged by the organization were set at or close to cost but were not less than the organization's full cost of providing its service. The organization was denied exemption because it operated in a commercial, nonexempt manner. The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Court held that the organization was not operated exclusively for charitable, educational or scientific purposes within the meaning of Section 501(c)(3) of the Code.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the court noted that Airlie acts as an intermediary and does not directly benefit the public, and Airlie's conference patrons are not limited to exempt entities. The court acknowledged that Airlie's activities have some noncommercial characteristics, but found these outweighed by other factors such as the nature of Airlie's clients and competition, its advertising expenditures and substantial revenues derived from wedding and special events. In the court's review, these factors support an adverse conclusion. The court concluded that Airlie does not qualify under Section 501(c)(3) of the Code because it operates its conference center in a manner consistent with that of a commercial business.

Application of law

As explained in Treas. Reg. Section 1.501(c)(3)-1(a)(1), to be exempt as an organization described in Section 501(c)(3) of the Code, you must be both organized and operated exclusively for one or more of the purposes specified in such section. Because you are neither organized nor operated exclusively for exempt purposes, you are not exempt.

Your Articles of Incorporation contain a purpose clause which is broader than acceptable under Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv). Additionally, your Articles indicate you will have stock, which will give ownership to individuals. Your Articles are also silent regarding the distribution of your assets upon your dissolution. As stated in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4), to satisfy the organizational test, you must have a valid purpose and dissolution clause. You do not have a proper purpose or dissolution clause; therefore, you are not organized for exempt purposes as described in Section 501(c)(3) of the Code.

You are formed provide a transportation service for a fee for anyone that needs a ride. You also mentioned other services you will provide, such as making loans. A substantial portion of your activities are devoted to non-exempt functions; therefore, you do not qualify for exemption as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The provision of transportation services to anyone interested, without condition or restriction, is not a charitable, educational or religious activity within the meaning of Section 501(c)(3) of the Code.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(2) because you are not providing 'charitable' services; rather, you are providing transportation services which are available to anyone for a fee. You are not like the organization described in Rev. Rul. 72-124. You do not meet the special needs, such as financial security, of the elderly and the disabled. You provide your services to anyone who needs transportation. Although you state that you will have lower rates for those over the age of 65, based on your pricing schedules, you charge the same to any passenger. Even if you do offer a discount, this factor alone is not enough to warrant exemption. Businesses often offer senior discounts, but that does not automatically entitle them to exemption.

You are not like the organizations described in Rev. Rul. 76-244 and Rev. Rul. 77-246. You are dependent on service fees to operate. Your fees cannot be described as nominal and they are not set below cost. You have no provision for basing your fees on the riders' ability to pay. You operate in a manner similar to any for-profit transportation service. You set your fees to meet your financial obligations.

You are not like the organization described in Rev. Rul. 85-2 because you are not lessening the burdens of government. As stated in Rev. Rul. 85-2, an activity is a 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. You have not shown that a governmental unit considers your activity to be its burden, or that you actually lessen that burden.

You are similar to the organizations described in the B.S.W Group, Inc. and Airlie Foundation. Your primary purpose is to provide transportation services for your clients who request non-emergency transportation. You are dependent on the fees you charge to operate. The provision of transportation services on a regular basis for a fee is a trade or business ordinarily carried on for a profit. In fact, multiple times throughout your application you refer to yourself as a "for-profit business." The fees you charge lack the donative element necessary to establish your activities as charitable. You do not qualify for exemption because you operate in a substantially non-exempt manner, rather than exclusively for charitable purposes.

Your position

You provide a transportation service to your local community. You are ready and able to fill the transportation void that currently exists. Your services include friendly, around the clock, door-to-door transportation service. You will focus on taking clients to and from work, school and daycare, as well as other transportation needs. You will focus on special care at a discounted rate for all citizens. Your initial potential customers will include primarily those in the lower to middle income brackets but of all ages in your community.

You will operate at low rates in disadvantaged and distressed communities. You will allow for low cost transportation services throughout the state of B. You claim you are not a call-by-demand service and do not operate like an ordinary cab service. You are "clearly a not-for-profit organization" that is seeking approval "for the express purpose to create employment opportunities and to work to invest and reinvest into B hardship communities." You are lessening the burdens of government because you were incorporated as a non-profit corporation.

Your activities are operated and coordinated under the authority of either the federal or local government in support of your charitable mission. This relationship supports that you are lessening the burdens of government so long as you operate as a governmentally supervised program.

You recommend that we review the Airlie Foundation v. Commissioner court case, which concluded that the foundation was operated for a substantial non-exempt purpose. You state that you are clearly seeking to service the disabled, people with disabilities, senior citizens, and the needy that are below poverty level and are in need of a community based transportation system at very low rates. You said your services are below cost.

Our response to your position

Although you state that you provide services to the disadvantaged, senior citizens and people with disabilities at reduced rate, you also provide services to anyone needing transportation. You have not provided a sliding scale fee schedule to demonstrate that your fee is based on the ability to pay of the riders. There is no evidence that your transportation rates are nominal. Furthermore, you have not demonstrated that your rates address the financial needs of your riders, including the elderly and the disabled.

As explained above, you are not lessening the burdens of a government since your services are not those which are normally provided by the government and the government did not request that you provide these services on their behalf.

You rely heavily on fees for transportation services to your clients. You are similar to the organization in Airlie Foundation. You are operated for a substantial non-exempt purpose and do not qualify for exemption under Section 501(c)(3) of the Code.

Conclusion

Based on the information provided, you do not qualify for exemption under Section 501(c)(3) of the Code. You are neither organized nor operated exclusively for exempt purposes within the meaning of Section 501(c)(3). You are operated for substantial non-exempt purposes, which precludes you from 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 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
Rulings and Agreements

Enclosure:
Publication 892