



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201438029**  
Release Date: 9/19/2014

Date: June 23, 2014

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00

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.

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.

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,

Michael Seto  
Manager, Exempt Organizations  
Technical

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



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: May 14, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

Company =

Dear :

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

FACTS:

You state that your mission will be accomplished by collecting donations and directing them to support charitable organizations and disaster recovery efforts. You will perform your coordination activities by offering an integrated mobile business solution which links cell phones, donation processing, and marketing. Your technology is a text-based application process that allows donors to make contributions from their mobile device. The application integrates texting software, secure credit card processing, and marketing solicitations to deliver a secure mobile donation process.

You state that you will primarily play the role of mass mobile donation coordinator. You will partner with non-profit organizations wanting to utilize your capabilities in the mobile donation business. Donations made through you will be earmarked by donors to specific partners. Organizations with which you partner will be assigned a keyword specific to that organization to be used by donors when they use your text based donation services. You will assist in the marketing for mobile donation processing, collect donations on behalf of your partners, distribute the donations to the partners, and provide reconciliation and donation reports for your partners.

You provide your mobile donation services to organizations who apply for them through an application process. You provide these services on a fee basis calculated in two ways. You charge a monthly fee for the use of your keyword and the donation reports that you create. Additionally, you charge transaction fees for the various transactions you perform. You charge

six cents per text, 2% of donations for bank card processing, 2% of donations for a licensing fee on the use of the program, and 2% of the donations as a processing fee for you.

You have a management contract and a license agreement with Company. The management agreement between you and Company provides that it will perform management and oversight functions, legal services, accounting, sales, and operations. Company will also perform audit, marketing, and specialized consulting for you. In exchange for these services, you will pay Company \$25,000 a month plus a 2% technology fee on the amount of each transaction you perform for organizations seeking donations. Company also owns the software that you use in order to provide your mobile donation services. The agreement between you and Company provides the license for this software to you for free, but you are paying a technology fee as part of your management contract. Additionally, you have no ownership or right to use the software providing the basis for your activity without license from Company.

Your Board of Directors is made up of six individuals. Two of your directors are also directors at Company. Another two of your directors are executives at companies with which Company contracts to provide consulting services, and the final two directors are unrelated to you or Company other than as your director. None of your directors are compensated in their roles as directors.

#### LAW:

I.R.C. § 501(c)(3) provides that organizations may be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and "no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that in order to be exempt under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

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

Treas. Reg. § 1.501(c)(3)-1(e)(1) states that, "an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513." An organization operated primarily for an unrelated trade or business is not exempt under 501(c)(3).

Revenue Ruling 64-182, 1964-1 C.B. 186, provides that corporation organized exclusively for charitable purposes derives its income principally from the rental of space in a large commercial office building which it owns, maintains, and operates. The charitable purposes of the corporation are carried out by aiding other charitable organizations, selected in the discretion of its governing body, through contributions and grants to such organizations for charitable

purposes. The ruling holds that the corporation is deemed to meet the primary purpose test of section 1.501(c)(3)-1(e)(1) of the regulations, and to be entitled to exemption under section 501(c)(3) of the Code, where it is shown to be carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources.

Revenue Ruling 67-149, 1967-1 C.B. 133, holds that an organization formed for the purpose of providing financial assistance to several different types of organizations which are exempt under section 501(c)(3) of the Code is itself exempt under that section. It carries on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals. The organization does not accumulate its investment income.

Revenue Ruling 68-489, 1968-2 C.B. 210, holds that an organization will not jeopardize its exemption under section 501(c)(3) of the Code, even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes. In this ruling, an organization exempt from Federal income tax under section 501(c)(3) distributed part of its funds to organizations not themselves exempt under section 501(c)(3). The exempt organization ensures use of the funds for section 501(c)(3) purposes by limiting distributions to specific projects that are in furtherance of its own exempt purposes. It retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes.

Revenue Ruling 69-528, 1969-2 C.B. 127, found that, "an organization regularly carrying on an investment service business that would be unrelated trade or business if carried on by any of the exempt organizations on whose behalf it operates, is not exempt under section 501(a)." This organization was, "free from the control of the participants and [had] the absolute and uncontrolled discretion in (1) investment of the property, (2) sale of investments and reinvestment of the proceeds, (3) payment of taxes and liens, (4) distributions of income and principal or the addition of accumulated income to principal, and (5) dealing with the property and managing the funds as if it were absolute owner thereof."

Revenue Ruling 71-529, 1971-2 C.B. 234, states that, "a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3)." The organization was found to only provide services to those organizations that were controlling it and the services provided were found to be essential functions of the colleges and universities.

Revenue Ruling 72-369, 1972-2 C.B. 245, provides that an organization organized to provide managerial and consulting services to organizations exempt under 501(c)(3) on a cost basis is not itself an exempt organization as there is no recognized charitable purpose.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the court determines that, "the presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

Church by Mail v. Commissioner, 765 F. 2d 1387 (9<sup>th</sup> Cir. 1985), aff'g 48 T.C.M. (CCH) 471 (1984), the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9th Circuit Court of Appeals, in

affirming the Tax Court's decision, stated: "The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

est. of Hawaii v. Commissioner, 71 T.C. 1067 (1979), the Tax Court held that compensation need not be unreasonable or exceed fair market value to be private benefit, stating "[n]or can we agree with petitioner that the critical inquiry is whether the payments made to International were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, International and EST, Inc., benefited substantially from the operation of petitioner."

#### ANALYSIS:

Providing commercial type services exclusively to exempt organizations is not an exempt purpose. Rev. Rul. 72-369, supra, provides that an organization providing managerial services to exempt organizations on a cost basis is not an exempt purpose under § 501(c)(3). Additionally, Rev. Rul. 69-528, supra, provides that an organization formed to provide investment services exclusively for exempt organizations is not operated for an exempt purpose. In both of these rulings the taxpayer was not controlled by an organization that is otherwise exempt and it did not charge a rate substantially below cost. Cf. Rev. Rul. 71-529, supra (exempting an organization that was entirely controlled by exempt universities and provided investment services exclusively to those organizations for a price substantially below cost). Here, you are not controlled by any exempt organization, and you provide fundraising services for a fee to any exempt organization that applies. Your fee is not substantially below your costs as you anticipate your service fee to be your primary source of revenue. Therefore, you are not operated for an exempt purpose.

Your activities consist entirely of providing fundraising services to organizations. Unlike the organization in Rev. Rul. 67-149, supra, you do not retain complete control over your funds when determining to whom those funds will be contributed. Your setup provides for funds to go to organizations of a donors choosing through you, for which you will take a six percent cut on top of monthly fees owed by the organization using your services. Additionally, you do not consider these funds to be your funds. Your fundraising services do not constitute the provision of grants to charities, rather they are services that are bought by the charities similar to the investment services found in Rev. Rul. 69-528, supra. You are not formed for an exempt purpose.

Additionally, you provide a substantial private benefit that is not permissible for exempt organizations. Section 1.501(c)(3)-1(d)(1)(ii). The presence of a single non-exempt purpose, if substantial, will remove an organization from exemption. Better Business Bureau, 326 U.S. at 283. Here, you are founded by Company and four of your six directors are related through their work with Company. Also, your sole activity is to use a product owned by Company and licensed by you. You have a management agreement with Company whereby you pay Company \$25,000 a month to run your operations and 2% of all of the donations that go through your services. In est of Hawaii, 71 T.C. 1067, the organization was denied exemption since its sole purpose was to offer the educational product of a for-profit organization and pay fees to that organization. Additionally, in Church by Mail, 765 F. 2d 1387, the organization was denied exemption since it operated exclusively to provide printing business to a company owned by the founders of the organization seeking exemption. There the sole activity was the printing and

publishing of religious material using the exclusive services of the founders printing company. Similar to both of these cases, you are merely offering a service that exclusively uses the intellectual property of your founder and you are paying that for-profit company monthly fees as well as a percentage of the funds that go through your service. You are formed for the substantial private benefit of Company, therefore you are not exempt from taxes as an organization described in § 501(c)(3).

#### CONCLUSION:

You are not operated exclusively for an exempt purpose. You provide a service for a fee and the fact that these services may be provided directly to tax exempt entities does not make such activity charitable. You also are formed for the substantial private benefit of a for-profit entity in violation of the requirements of § 501(c)(3). You are not exempt under § 501(c)(3).

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

Your protest statement should 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 the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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](http://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 protest 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 this address:

You may also 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,

Michael Seto  
Manager, Exempt Organizations  
Technical