Private Letter Rulings

Private Letter Ruling 201224034, 06/08/2012, IRC Sec(s). 501

UIL No. 501.04-00, 501.30-00, 501.33-00

Exempt orgs.—exempt status—final adverse determinations.

Headnote:

IRS issued final adverse determination revoking **Code Sec. 501(c)(4);** org.'s exempt status, effective stated date, where org. failed to file protest to proposed adverse determination within requisite 30 days.

Reference(s): **Code Sec. 501;**

Full Text:

Number: 201224034 Release

Date: 6/15/2012

Date: March 21, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

UIL: 501.04-0 501.30-00Tax Years: 501.33-00

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 § 501(c)(4). 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 § 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,

Lois G. Lerner

Director, Exempt Organizations

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter Redacted Final Adverse Determination

Letter

TAX EXEMPT AND

GOVERNMENT ENTITIES

DIVISION

Date: February 15, 2012 501.04-00 501.30-00 501.33-00

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

WASHINGTON, D.C. 20224

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend: = = = = - - - = - -

State

Founder

Schools

Office

County

Program 1

Program 2

Program 3

Program 4

Program 5

Program 6

Program 7

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(4). The basis for our conclusion is set forth below.

Facts:

You were incorporated under the laws of State. You transitioned from a series of for- profit successors with the following purposes: Promoting political change through articles, columns, books, and other media Founder was planning to create. *Producing and selling prepared foods to consumers. *Promoting solutions to the state's challenging problems through grassroots advocacy and publicity.

Your latest Articles of Incorporation provide that you are organized to promote solutions to

State's challenging problems through grassroots advocacy and publicity. Your Articles also state that you will have a board of directors with one member and that member will be

Founder. Founder is also your president. Upon dissolution, your remaining assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) or § 501(c)(4) of the Code.

Your Bylaws provide that you shall have one director and that person alone shall be known as the Board of Directors. Your Bylaws further provide that directors shall not be compensated for their duties as directors. Salaries of your officers shall be fixed by resolution of your board of directors. Founder is also your treasurer and secretary. You stated that as you grow, you will add an appropriate oversight mechanism but in your current state, you find this unnecessary. Your Bylaws contain a Conflict of Interest and

Compensation Approval Policies. However, as Founder is your only director and officer, these Policies are immaterial.

You state that you are a citizen's advocacy group focused on solving some of the critical problems facing the citizens of State. At the time of application, you were engaged in the following activities: *Program 1: this program allowed citizens to learn about and commit to specific action to save the marine environment through a website program. This program attempts to motivate citizens to substantially reduce the amount they pollute. Individuals who visit the website are presented with a list of actions they can take to reduce the amount they pollute, and then are asked to commit to taking specific actions. The website calculates how many pounds of pollution would not reach the marine environment as the result of each step taken. You worked with other organizations to develop the predictor model on the website. *Program 2: this program attempted to help protect citizens from inappropriate law enforcement raids. You worked with public officials to pass legislation requiring jurisdictions using law enforcement tactical teams to report periodically on the number of tactical deployments and outcomes. State's governor signed the legislation into law. *Program 3: this program allowed you to work with the leadership of Schools to design and implement a system where organizations can partner with schools to provide improved education opportunities to students. Founder worked with the Office to develop a program where individuals, businesses, and churches could partner with a specific school to provide additional educational opportunities to students or resources to the school.

At the time of application, you anticipated that your activities would change to the following: *Program 1 *Program 4: this program would allow you to work with representatives of State's governor's office to implement one or more pilot programs showing how state

agencies can restructure their systems to cut costs while providing better customer service. *Program 5: this program would allow you to work with local business organizations to create programs to help entrepreneurial companies start and expand in State, creating high- quality jobs.

You state that for most of the time from submission of your application you were on hiatus while Founder, ran for elective office. After losing the election, Founder's attention turned back to your operations. You are currently focusing on the following: *Program 1: you are working with residents in a few of the most critical communities to determine the cost structure and other criteria necessary to build community support to invest in sewer systems.*Program 6: Founder was just elected chair of County's state-mandated organization whose mission is to represent the interests of parents and citizens to County's board of education. Founder's chairmanship started by fielding a comprehensive survey to determine residents' biggest concerns. You will participate in this research and report the results so the organization can use the results to choose a number of issues to research further and help solve.*Program 7: you have almost completed a research project which will report how ambulance response rates in County compare with the national standard. You plan to report the results of this research mid-2011 and set up a task force of several high-level fire department personnel as well as representatives from two major hospitals in County.

The task force will determine how to get ambulances back on the street more quickly.

Your website contains a description of all of your programs. Your website also contains a blog written and maintained by Founder. The blog started around the time of your incorporation and most recent amended Articles of Incorporation. Most blog posts center around current or pending legislation, as well as the agendas of elected political officials.

Of the 17 blog posts, five of these criticize Founder's former opponent in a race for elected office. These critical blog posts occurred both before and after the election.

The blog page on your website contains links to Founder's campaign website.

You have been primarily funded through donations from Founder. You hope to recruit additional sources of support in the future. In the year that you were incorporated, income was generated from Founder's donations and Program 2. Expenses for that year primarily included those for disbursements to Program 2, software, personal property taxes, and your website. For the following tax year, you only incurred expenses for bank fees, depreciation, and merchant account fees.

At the time of application, you indicated you may spend money attempting to influence the selection, nomination, election, or appointment of individuals to public office or office in a political organization. Upon further development, you indicated you have not spent any money doing so, nor do you ever intend to do so. Your webpage that seeks donations from individuals states that because donations are "used for lobbying and promoting political change, it is not tax-deductible under U.S. law."

You stated that because Founder is a political figure who ran for elective office in 2004 and 2010, you wish to seek exemption as a § 501(c)(4) organization to avoid the appearance of any impropriety.

Law:

Section 501(a) exempts from federal income tax organizations described in § 501(c)(4).

Section 501(c)(4)(A) describes civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. Section 501(c)(4)(B) indicates that subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations ("regulations") states that an organization may be exempt as an organization described in § 501(c)(4) if it is not organized or operated for profit and is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community, such as bringing about civic betterments and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) provides that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its

members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held 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. The Court found that a trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university, and therefore, the association did not qualify for exemption.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), a corporation was organized for the purpose of purchasing a government housing project and converting it to cooperative, nonprofit housing for its members. Individuals became members in the corporation by purchasing an apartment unit. The court held that the organization was not described in § 501(c)(4) because it was "a public-spirited but privately-devoted endeavor" with only incidental benefit to the community. Id. at 814. Although anyone was eligible to join the organization, the court determined that it provided benefits only to its members and not the community as a whole.

In Erie Endowment v. United States, 316 F.2d 151, 156 (3d Cir. 1963), the court held that to qualify for exemption within the meaning of § 501(c)(4), "the organization must be a community movement designed to accomplish community ends."

In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F.2d 684 (2d Cir. 1973), the court ruled that an organization benefitting only its members did not meet the requirements of § 501(c)(4) because the benefits flowed directly to members of the organization. The court followed "the rule that the presence of a single substantial non- exempt purpose precludes exempt status regardless of the number or importance of the exempt purposes." Id. at 686. The organization's primary activity benefited its members rather than the public, and therefore it was not "'primarily' devoted to the common good as required by even the most liberal reading of 501(c)(4)." Id. at 687.

Rev. Rul. 74-361, 1974-2 C.B. 159, held that an organization that was organized as a nonprofit volunteer fire company to provide fire protection and ambulance services for a community could be held as exempt from Federal income tax as a social welfare organization described in § 501(c)(4) because its activities promote the common good and general welfare of the community.

Rev. Rul. 68-45, 1968-1 C.B. 259, held that a war veterans' post which was primarily engaged in social welfare activities could qualify for exemption from Federal income tax under § 501(c)(4) even though a substantial portion of its revenue came from bingo games open to the general public.

Rev. Rul. 81-95, 1981-1 C.B. 332, held that an organization primarily engaged in the promotion of social welfare within the meaning of § 501(c)(4) may participate in lawful political campaign activities involving the nomination or election of public officials without adversely affecting its exempt status.

Analysis:

Based on our analysis of the information you submitted with your application and in subsequent correspondence, we have determined that you are not operated primarily for the promotion of social welfare within the meaning of § 501(c)(4), and therefore do not qualify as an organization described in § 501(c)(4).

To be described in § 501(c)(4), an organization must be operated exclusively for the promotion of social welfare. An organization will be operated exclusively for the promotion of social welfare, and therefore exempt, if it is primarily engaged in promoting the common good and general welfare of the community. See § 1.501(c)(4)-1(a)(2)(i). Exempt purposes include bringing about civic betterments and social improvements. See § 1.501(c)(4)-1(a)(2)(i).

Whether an organization is "primarily engaged" in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization's activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities. See e.q., Rev. Rul. 74-361, supra (volunteer fire company that provides recreational facilities for members is primarily engaged in promoting social welfare where providing facilities primarily furthers exempt purposes);

Rev. Rul. 68-45, supra (organization's principal source of income is not sole factor in determining whether it is "primarily engaged" in promoting social welfare).

Based on Contracting Plumbers Cooperative Restoration Corp., an organization will not meet the requirements of § 501(c)(4) if it is operated primarily to benefit a private group rather than the community as a whole, even if it provides some benefit to the community. 488 F.2d at 687. Your activities serve to primarily benefit Founder. You solely serve to promote Founder and Founder's agenda and platforms. As provided in your Articles and

Bylaws, Founder is the only member and officer on your Board of Directors. There is no community input or oversight, or independent members of the community on your Board of Directors. This is demonstrated from the fact that while Founder sought elected office your operations seized until the election was over. Furthermore, the selection, operation, and oversight of your programs and activities are made at the sole discretion of Founder, and are solely funded by Founder.

Founder also plans to use you to conduct activities in connection with Founder's election as the chair of County's state-mandated organization. The holding of Erie Endowment, requires that a § 501(c)(4) organization be a community movement designed to accomplish community ends. 316 F.2d at 156. Your programs, however, are designed strictly to promote Founder and that individual's pursuits.

Additionally, you have not established that your primary activity is not to engage in direct or indirect political intervention. The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. § 1.501(c)(4)-1(a)(2)(ii). In Rev. Rul. 81-95, supra, we concluded that "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) . . . as long as it is primarily engaged in activities that promote social welfare." The corollary to this is that if an organization's primary activities do not promote social welfare but are direct or indirect political intervention, the organization is not exempt under § 501(c)(4). The key is to determine the character of the organization's primary activities by looking at all of the facts and circumstances. Founder used you to prepare studies that coincide with Founder's political interests, to lobby for things that Founder believes in, and to follow political opponents through the blog on your website. Your website contains a blog written and maintained by Founder that criticizes Founder's former opponent in a race for elected office. The blog also contains information on the political agendas of elected political officials. There are no procedures in place to bar using the website as platform development

Conclusion:

You have not established that you meet the requirements of § 501(c)(4) because you are not operated exclusively for the promotion of social welfare. Your primary activities do not serve the general welfare of the people or the community as required by § 1.501(c)(4)- 1(a)(2).

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.qov, Forms and Publications.

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:

Internal Revenue Service TE/G E ( ) 1111 Constitution Ave, N.W. Washington, DC 20224

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,

Lois G. Lerner

Director, Exempt Organizations

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