
IRS LTR: IRS Denies Community Organizing Group Exempt Status.

Citations: LTR 201408029

The IRS ruled that an organization formed to engage in community organizing services to promote the advantages of expanded broadband access in unserved and underserved areas failed to qualify for tax-exempt status because it is not organized and operated exclusively for one or more exempt purposes.

UIL: 501.00-00

Release Date: 2/21/2014

Date: November 26, 2013

Dear * * *:

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

You do not operate exclusively for an exempt purpose and your activities appear to provide more than incidental benefit to private parties.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

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, you should 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,

Karen Schiller

Acting Director,

EO Rulings and Agreements

Date: January 23, 2013

Dear * * *:

We have considered your application for recognition of exemption from Federal income tax under § 501(a) of the Internal Revenue Code (the "Code") as an organization described in § 501(c)(3). Based on the information submitted, we conclude that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

FACTS

You filed your Articles of Incorporation (the "Articles") with your Secretary of State on Date 1 and submitted a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) to the Internal Revenue Service (IRS) later that year.

Purpose & Activities

Your original Articles of Incorporation state that your purpose is:

to expand and improve internet service to underserved and unserved areas, improve affordability and access for education, health services and community institutions and to support economic development within the 16 county service area of [your state's] Northeast Commission . . . provide a single point of contact for businesses and community groups interested in improving broadband service in their area . . . provide access to technical, financial and physical resources for developing broadband access . . . be an advocate for improving broadband access in our service area. . . .

You submitted an amendment to your articles, dated Date2, adding a statement that you will operate exclusively for charitable and educational purposes in a manner consistent with § 501(c)(3) of the Code. However, you did not demonstrate that this amendment had been formally adopted by your Board or filed with your Secretary of State. When we asked whether you would be willing to amend your Articles to include proper purpose and dissolution clauses you responded that you would revise your Bylaws.

Your efforts to improve internet service in your region take place in the context of a national effort to do so. The American Recovery and Reinvestment Act (Recovery Act) established a program, including large federal grants, to develop and expand broadband service, named the Broadband Technology Opportunities Program (BTOP). Its purpose is to stimulate economic growth and job creation, and provide benefits to education, healthcare, public safety and expand broadband access and adoption. The Assistant Secretary of the Department of Commerce found it in the public interest

to permit for-profit corporations an non-profit entities (not otherwise encompassed by section 6001(e)(1)(B)) that are willing to promote the goals of the Recovery act and comply with the statutory requirements of BTOP to be eligible for a grant.

In your state, N, a non-profit research center operates “middle mile” internet lines. These middle mile lines branch off from a “central backbone” internet line. N was awarded the state grant through the program authorized under the BTOP. Internet Service Providers (ISPs), in turn, operate “last mile” internet lines by branching off from the middle mile lines. AN ISP provides internet service directly to subscribers and users via these last mile internet lines. You stated that you will not receive any of the BTOP funds awarded to N.

O is a regional economic development organization created by your state’s legislature to further business development and improve the quality of life for residents in the sixteen counties of the Northeast region. You state that O refers ISPs within your region to you, which generally are for-profit entities.

You explain your role in expanding broadband coverage as providing a single point of contact for “stakeholder groups” interested in improving broadband service in your region in an effort to address the accessibility and affordability of internet coverage. These stakeholder groups will consist of community groups, local businesses and business groups, local governments, school boards, community colleges, local internet users, and commercial internet service providers (“ISPs”), among others. You will negotiate with N to gain low-cost or no-cost access to N’s middle mile internet lines for ISPs. You state that you will assist the ISPs on the condition that they intend (at least in part) to provide last mile internet line services to unserved and underserved areas of your region. Each project in which you participate will develop its own targets based on the circumstances in the project area, and that you will not participate in any project that does not adopt and demonstrate progress toward a specific target for improving access to broadband service by access to service and/or decreasing cost.

You will engage in “community organizing services” to carry out your purpose. You will hold “stakeholder meetings” to explain the opportunity that N investment in middle mile infrastructure represents for your region, and to explain the processes that other communities have used to expand access to broadband services. Though these meetings, working groups will be formed that represent a variety of community interests. These working groups will identify “community resources” that can be aggregated in a program to expand access to broadband.

You provided examples of the types of community resources that will be identified by the working groups, which include: free or reduced charge access to public rights of way; “repurposing” existing grant funds; cost-savings driven by broadband access that could be “repurposed” into the expansion of broadband access; locations in public buildings that could house network infrastructure at no cost; and publicly owned towers that could host wireless network sites for free or at a reduced cost.

You will also advocate for improving broadband access in your service area, and work with the community groups to provide support with grant writing, technical planning, market analysis, and to develop a “final plan” for improving service to the targeted areas of your region. You also will work to gain low cost or no cost access to N-owned fiber optic cable as a part of the final plan. One example you provide states that “an existing downtown business group interested in improving service could encourage all its members to use the community broadband service thereby providing a revenue stream for expanding broadband service.”

You anticipate that your funding will come from government grants and private sources and you do not plan to charge for your community organizing services. You may enter “cost-sharing

agreements" with community partners to pay for service-related expenses. Furthermore, you state that most for-profit entities that benefit from your services will be charged market rate or a reduced fee for broadband access, and that you anticipate that the associated revenue will help to fund your operations, although you did not provide details about such arrangements.

Governance

The region in which you work is split into four four-county "districts," and each district is represented by one member of your Board of Directors (referred to individually as the "Directors," and collectively as the "Board"). In addition, you have three at-large Directors. The Chairs of P and of O are non-voting ex officio members of your Board. You have selected Directors to serve in the positions of Chairperson, Secretary, and Treasurer (collectively referred to as the "Officers").

Your Officers and Directors currently work on a volunteer basis. If funding is secured, these individuals may receive reasonable compensation for services rendered, and you intend to fix such amounts based on industry standards within the non-profit sector.

You state that other staff currently work on a volunteer basis. If funding is secured, you plan to hire an Executive Director, a Consultant, and staff familiar with broadband engineering and marketing. None of your directors or officers fit this description at the present time, but they may be considered for these positions if they are qualified, and "after a cooling off period similar to that in place for many federal agencies."

You state that no member of your Board owns, in whole or in part, an ISP or other business entity that will benefit from your services.

LAW

Section 501(a) of the Code exempts from Federal income taxation organizations described in § 501(c).

Section 501(c)(3) recognizes entities that are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes no part of the net earnings of which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in § 501(h)), and which does not participate in, or intervene in any political campaign.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (the "Regulations") states that in order to be exempt as an organization described in § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations states that an organization is "organized exclusively" for one or more exempt purposes only if its articles of organization limit the purposes of the organization to one or more exempt purposes and do not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which are not in furtherance of one or more exempt purposes. An organization is not considered organized exclusively for exempt purposes, if its articles, describe purposes that are broader than the purposes specified in § 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(iii) of the Regulations states that an organization is not organized exclusively for one or more exempt purposes if its articles of organization expressly empower it to carry on, as more than an insubstantial part of its activities, activities which are not in furtherance of

one or more exempt purposes, even though its articles describe a purpose no broader than the purposes specified in § 501(c)(3).

Section 1.501(c)(3)-1(b)(2) defines "articles" to mean the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

Section 1.501(c)(3)-1(b)(4) requires that the assets of an exempt organization be dedicated to an exempt purpose. Upon dissolution, such assets must continue to be so dedicated, by reason of a provision in the organization's articles or by operation of law or by a court order, for one or more exempt purposes, to another exempt organization or to a government, for a public purpose.

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 § 501(c)(3). An organization will not be regarded as exempt if more than an insubstantial part of its activities further a non-exempt purpose.

Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals, who are defined in § 1.501(a)-1(c) as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) explains that the term "charitable" is used in § 501(c)(3) of the Code in its generally accepted legal sense. The term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions, (ii) to eliminate prejudice and discrimination, (iii) to defend human and civil rights secured by law, or (iv) to combat community deterioration and juvenile delinquency. The Service has long held that poor and distressed beneficiaries must be needy in the sense that they cannot afford the necessities of life. See Rev. Proc. 96-32, 1996-1 C.B. 717, section 2.01.

Section 1.501(c)(3)-1(d)(3) explains that the term "educational," as used in § 501(c)(3) of the Code, relates to the instruction or training of the individual for the purpose of improving or developing his or her capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. This includes an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. See § 1.501(c)(3)-1(d)(3)(ii), Example (2), of the Regulations.

Rev. Rul. 85-1, 1985-2 C.B. 177, states that to determine whether an organization is lessening the burdens of government, it must be considered whether a governmental unit considers such activities to be its burden, and whether the activities actually lessen such governmental burden. An activity is a burden of the government if there is objective manifestation by the government unit that it considers the activities of the organization to be its burden. All relevant facts and circumstances are considered in this analysis. See also Rev. Rul. 85-2, 1985-2 C.B. 178 (stating that an organization is lessening the burdens of government if: (1) its activities are activities that a governmental unit considers to be its burdens; and (2) the activities actually lessen such government burden).

In Rev. Rul. 77-111, 1977-1 C.B. 144, the Service found that two organizations did not qualify for tax exemption under § 501(c)(3) because they provided more than incidental private benefit. The organization in Situation 1 was formed to increase business patronage in a deteriorated area mainly inhabited by minority groups by providing information to the public on the area's shopping opportunities, local transportation, and accommodations. This assisted businesses operated by minorities and those operating in depressed areas, as well as businesses not owned by minority groups and not experiencing difficulty because of their location. The Service concluded that the primary purpose of the organization was to promote business, which is not an exempt purpose. The purpose of the organization in Situation 2 was to revive retail sales in an area of continued economic decline by constructing a shopping center. The organization purchased land, which it sold to the city at no profit, and the city acquired additional land for the project. The city required that minorities be employed in both the construction and the operation of the project, and stores located within the project likewise were required to employ a certain percentage of minority group employees. The Service concluded that the organization's activities resulted in major benefits for the stores that would locate in the shopping center, and was thus not eligible for exemption.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that a trade association did not qualify for exemption, because it had an "underlying commercial motive" that distinguished its educational program from the type provided by a university. In so holding, the Court ruled that the presence of a single non-exempt purpose, if substantial in nature, destroys an organization's basis for tax exemption, regardless of the number or importance of that organization's truly exempt purposes.

"Tax exemptions are matters of legislative grace and taxpayers have the burden of establishing their entitlement to exemptions." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973) (citing Dickinson v. United States, 346 U.S. 389, 74 S. Ct. 152, 98 L. Ed. 132 (1953)). In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531, 534 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981), the Tax Court stated that meeting this burden requires an "open and candid disclosure of all facts bearing upon [the applicant's] organization, operations, and finances . . . [and if] such disclosure is not made, the logical inference is that the facts, if disclosed, would show that [the applicant] fails to meet the requirements [for exemption]."

Rev. Proc. 2012-9, 2012-2 I.R.B. 261, section 4.03, states that exempt status may be recognized in advance of an organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

ANALYSIS

An entity must be both organized and operated exclusively for exempt purposes to qualify for exemption from federal income tax See §§ 501(c)(3) and 1.501(c)(3)-1(a). You are neither organized nor operated exclusively for exempt purposes and appears that you will engage in commercial activities which will benefit private interests.

Not Organized Exclusively for Exempt Purposes

An organization is "organized exclusively" for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes, and do not expressly empower it to engage (other than as an insubstantial part of its activities) in activities which are not in furtherance of one or more exempt purposes. See § 1.501(c)(3)-1(b)(1)(i)-(iv).

You have not submitted adopted and filed articles that contain the required purpose and dissolution clauses. An amendment to your Articles dated Date 2, states that you will operate exclusively for charitable and educational purposes and in a manner consistent with § 501(c)(3) of the Code. Such a broad restatement of the language of the Code can be acceptable as a purpose. However, your articles continue to include a more specific purpose: "to expand and improve internet service to underserved and unserved areas." Expanding internet service is not among the enumerated exempt purposes. Nor would it be considered within the "general legal understanding of charity." Charity has been, and continues to be understood as, providing the necessities of life to the poor and distressed. This specific purpose is broader than the purposes specified in the Code, and empowers you to engage in activities which are not in furtherance of one or more exempt purposes.

Moreover, you did not explain how this amendment to your Articles was formally adopted or enacted by your Board, or whether it was filed with the Secretary of State of State. See Christian Echoes National Ministry, supra; Bubbling Well, supra; Rev. Proc. 2012-9, section 4.03, supra. Finally, your Articles lack a clause stipulating that your assets will be irrevocably dedicated to § 501(c)(3) purposes. When asked, you did not represent that you would amend your Articles as requested. Instead, you stated that you would amend your bylaws.

Pursuant to section 1.501(c)(3)-1(b)(2), the term "articles" means "the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created." Accordingly, the organizational test cannot be met by reference to any document that is not the creating document. In the case of a corporation, the by-laws cannot remedy a defect in the corporate charter. Subsidiary documents that are not amendments to the creating document may not be relied on. A charter must be amended in accordance with State law, which generally requires filing the amendments with the chartering authority.

Thus, your Articles do not contain a statement of purposes required by § 1.501(c)(3)-1(b)(1) of the Regulations, or a clause stipulating the distribution of assets on dissolution as described under § 1.501(c)(3)-1(b)(4). Consequently, you do not meet the organizational test set forth under § 1.501(c)(3)-1(b) of the Regulations.

Not Operated Exclusively for an Exempt Purpose

In order to be recognized as an organization described in § 501(c)(3) of the Code, an organization must also be operated exclusively for one or more of the purposes specified in that section. See § 1.501(c)(3)-1(a)(1) of the Regulations. While your activities may have some indirect charitable and educational effects, you are not exclusively operated for exempt purposes.

You do not serve a charitable purpose. The term "charitable" is used in its generally accepted legal sense, and includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government. See § 1.501(c)(3)-1(d)(2).

You do not limit your services to a "charitable class" of the poor and distressed, aged, sick, handicapped or underprivileged. The Service has long held that poor and distressed beneficiaries

must be needy in the sense that they cannot afford the necessities of life. See Rev. Proc. 96-32, sec. 2.01, supra. Broadband internet access has yet to be recognized as such a necessity, and individuals without broadband access are not recognized as a charitable class. Therefore, it follows that expanding and improving access to broadband internet service does not constitute a charitable purpose within the meaning of § 501(c)(3). Furthermore, your services are available to and appear to benefit all members of the community, including commercial entities, and are not limited to one or more charitable classes. Therefore, you do not serve a charitable purpose by relieving the poor and distressed or the underprivileged.

Nor do you serve an educational purpose. The term "educational," as used in § 501(c)(3), relates to the instruction or training of the individual for the purpose of improving or developing his or her capabilities, or the instruction of the public on subjects useful to the individual and beneficial to the community. See § 1.501(c)(3)-1(d)(3). Your activities may ultimately and indirectly assist the educational purposes of other organizations. For example, you intend to help connect libraries and schools to the high speed broadband. However, you cannot claim their educational purposes as your own and it is not your exclusive purpose. Informing the public of the benefits of expanded and improved broadband internet service is more like promotion than it is education. You have not established that you serve an educational purpose.

You do not lessen the burdens of government. No governmental entity has accepted as its burden providing internet to all, nor specifically organizing local businesses and organizations to bargain for such services. You have not offered any objective manifestation by a governmental unit that it considers your activities to be its burden. See Rev. Rul. 85-2, supra. Moreover, you have failed to demonstrate that a governmental unit considers you to be acting on its behalf. See Rev. Rul. 85-1, supra. Although you may be organized to assist other entities in carrying out the purposes of the BTOP, the program is not a manifestation of governmental responsibility. Rather it is an attempt to motivate businesses and non-profits to expand the broadband system. Thus, you have not established that you serve a charitable purpose by lessening the burdens of government.

Non-Exempt Commercial Purpose

You are operating for a substantial non-exempt commercial purpose. You explained that your role is to promote the advantages of expanded broadband to all members of the community, convene stakeholder meetings to discuss how to attract ISPs to the communities at the end of the "last mile," and negotiate with the middle mile on behalf of the ISP's.

You will engage in "community organizing services," which include holding stakeholder meetings to explain the processes that other communities have used to expand access to broadband services, form working groups representing a variety of community interests, and assisting those groups to identify resources that can be aggregated in a program to expand access to broadband. You provide examples such as donations of publicly owned space for wireless network towers, public rights of way that could be accessed at reduced or no charge, locations in public buildings that could house infrastructure at no cost. In these examples, the government would essentially subsidize the commercial internet providers. One of your primary activities is negotiating with N for low cost or no cost access to the middle mile broadband lines for the ISPs. Thus, a central part of your activities will be coordinating donations from public entities to reduce ISPs business-related expenses and increase the demand for their services. This is a commercial purpose.

Although you expect the ISPs to "repurpose" the amounts they save in expenses toward more affordable and accessible broadband services for the unserved and underserved populations of Region, you will not have any control over the future activities of the ISP's. Based on the information you provided, it appears that more than an insubstantial part of your activities are in furtherance of

non-exempt commercial purposes. See § 1.501(c)(3)-1(c)(1).

Thus, you cannot argue that you are operated exclusively to promote exempt purposes. See § 1.501(c)(3)-1(c)(1) of the Regulations: see also Better Business Bureau, supra.

More than incidental Private Benefit

Your “community organizing services” will bestow measureable and significant benefits on commercial entities while the benefit to the poor and distressed is indirect and unquantified. Your efforts to reduce business expenses and increase revenue of commercial ISPs, sell broadband access to generate revenue, and expand the customer bases will benefit privately owned for-profit ISPs.

Your expectation of shared cost savings with “community partners” and possible revenue from the fees paid by for-profit beneficiaries, show that the commercial participants recognize the financial benefits and may share them with you.

Furthermore, the unserved and underserved populations will become future customers for commercial ISPs. In effect, you will be creating a new customer market for ISPs. Thus, whether you are viewed as directly or indirectly involved in the subsequent commercial transactions between ISPs and end-users, you intend to create a marketplace for free, reduced cost, and market rate broadband access that would not exist without your community organizing services. And under the circumstances, it appears that this serves a private, rather than a public interest. See § 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Therefore, as a practical matter, you will be engaged in commercial activity, because you will help facilitate the generation of income, cost-savings, and the expansion of customer bases for the benefit of commercial ISPs.

Your activities will generate major benefits for commercial ISPs that would experience lower costs and higher revenue from providing broadband access to businesses, non-profits, and individuals in your region. You will also provide private benefit to for-profit businesses that would receive enhanced accessibility to broadband internet due to the “aggregated community demand” you aspire to produce. Thus, like the organization in Situation 2, your activities are directed to benefit commercial entities, rather than to accomplish exclusively § 501(c)(3) purposes. As such, like the organizations described in Rev. Rul. 77-111, you do not qualify for exemption under § 501(c)(3) of the Code.

CONCLUSION

In light of the foregoing, we have determined that you do not qualify for exemption from Federal income tax under § 501(a) of the Code as an organization described in § 501(c)(3), because you are not organized and operated exclusively for one or more exempt purpose. Your Articles lack sufficient purpose and dissolution clauses. Even if your Articles contained the required clauses, the purposes for which you are created are not exempt purposes as specified in § 501(c)(3) of the Code. And even if it is assumed that you are organized for an exempt purpose, you nevertheless would fail to qualify for tax exemption because a substantial part of your activities further non-exempt purposes and benefit commercial entities.

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.

This declaration must be signed by an elected officer, a member of the board of directors, or a trustee rather than an attorney or accountant.

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, 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. Section 7428(b)(2) of the Code 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:

Internal Revenue Service

Attn: * * *

* * *

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,

Karen Schiller,

Acting Director

EO Rulings and Agreements

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