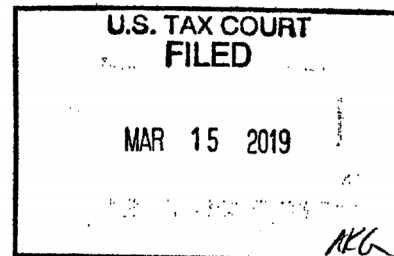


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UNITED STATES TAX COURT

PANERA BREAD FOUNDATION, INC.

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 5198-19 "X"

**PETITION FOR DECLARATORY JUDGMENT  
(EXEMPT ORGANIZATION)**

Pursuant to section 7428 of the Internal Revenue Code (the "Code"), Panera Bread Foundation, Inc. petitions this Court for a declaratory judgment regarding its continuing qualification as an organization described in section 501(c)(3) of the Code, and alleges the following:

1. Petitioner's name and principal place of business is: Panera Bread  
**Address Used By Court**  
Foundation, Inc., 3630 S. Geyer Road, Suite 100, St. Louis, MO 63127.
2. Petitioner's Taxpayer Identification Number ("TIN") is set forth on the Statement of Taxpayer Identification Number submitted simultaneously with this Petition in accordance with Rule 20(b) of this Court's Rules of Practice and Procedure.

3. On December 20, 2018, the Internal Revenue Service (“IRS”) issued a final determination that Petitioner no longer qualified as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code. The revocation of Petitioner’s tax-exempt status was effective as of January 1, 2012. A true and correct copy of the final determination letter, with Petitioner’s TIN redacted in accordance with Rule 27(a), is attached hereto as Ex. 1.

4. Petitioner has exhausted its administrative remedies within the IRS.

5. The determination that Petitioner no longer qualifies as a tax-exempt organization under section 501(c)(3) of the Code is erroneous for the following reasons:

a. Petitioner is organized and operated exclusively for charitable and educational purposes within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(1)(i) of the Treasury Regulations (“Regulations”).

i. Petitioner provided grants and assistance to charitable organizations that feed the hungry and assist children, which furthers charitable purposes within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(2) of the Regulations.

- ii. Petitioner provided grants and assistance to individuals by giving away free food through its Panera Cares Cafe program, which is inherently charitable because it relieves the poor and distressed and reduces economic tensions within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(2) of the Regulations.
- iii. Petitioner provided job training at its Panera Cares Cafes to high-risk individuals between the ages of 16 and 21, which is educational within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(3) of the Regulations.
- iv. Petitioner provided job training at its Panera Cares Cafes to individuals with developmental disabilities, which is educational within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(3) of the Regulations.
- v. Petitioner provided information to members of the public regarding food insecurity, which is educational within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(3) of the Regulations.
- vi. In its proposed revocation, the IRS erroneously applied the factors discussed in *Better Business Bureau of Washington, D.C. v. United States*, 326 U.S. 279 (1945), *United States v. American Bar*

*Endowment*, 477 U.S. 105 (1986), *American Institute for Economic Research v. United States*, 302 F.2d 934 (Ct. Cl. 1962), *Easter House v. United States*, 12 Cl. Ct. 476 (1987), *Airlie Foundation v. Internal Revenue Service*, 283 F. Supp. 25 58 (D.D.C. 2003), *B.S.W. Group, Inc. v. Comm'r*, 70 T.C. 352 (1978), and Revenue Ruling 72-369, 1972-2 C.B. 245, in claiming that Petitioner's activities were characteristic of a trade or business ordinarily carried on by a for-profit commercial business. A true and correct copy of the proposed revocation letter, with Petitioner's TIN redacted in accordance with Rule 27(a), is attached hereto as Ex. 2.

- vii. The IRS failed to consider the relevant factors set forth in *Living Faith v. Comm'r*, 950 F.2d 365 (7th Cir. 1991), *aff'g* 60 T.C.M. (CCH) 710 (1990), in reviewing Petitioner's activities.
- viii. The IRS erroneously claimed, without support, that Petitioner served a "private rather than public purpose" because it received donations from Panera, LLC.
- ix. Petitioner's activities did not provide an impermissible private benefit to any for-profit entities and, therefore, were fully consistent with the requirements of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

- b. No part of the net earnings of Petitioner inured to the benefit of any private shareholder or individual.
  - c. Petitioner did not carry on propaganda or otherwise attempt to influence legislation.
  - d. Petitioner did not participate in or intervene in any political campaign on behalf of or in opposition to any candidate for public office.
6. The facts upon which Petitioner relies are as follows:
- a. Petitioner is operated for charitable purposes within the meaning of section 501(c)(3) of the Code.
    - i. Petitioner was formed in 2002 for the charitable purposes of supporting health and welfare; providing assistance to the poor, distressed or underprivileged; and supporting the advancement of science and education.
    - ii. Petitioner described its close relationship with Panera, LLC, a for-profit entity with over 2,000 bakery-cafe locations, in its initial Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*. A true and correct copy of the filed application for tax-exempt status is attached hereto as Ex. 3.
    - iii. Petitioner obtained a determination from the IRS that it was described under section 501(c)(3) of the Code and classified as a

public charity under section 509(a)(1) of the Code as of January 10, 2002. A true and correct copy of the IRS's determination letter, with Petitioner's TIN redacted in accordance with Rule 27(a), is attached hereto as Ex. 4.

- iv. From 2002 through 2010, Petitioner primarily granted funds to other organizations that are tax-exempt under section 501(c)(3) of the Code.
- v. Petitioner raised contributions through public donation boxes located in Panera, LLC bakery-cafes, matching donations from Panera, LLC, and other public contribution campaigns.
- vi. Petitioner consistently engaged in initiatives directed towards those without access to food and expanding charitable assistance within communities.
- vii. Petitioner continued to provide grants and assistance to charitable organizations that feed the hungry and assist children, even as it began the initiative described below. Grant recipients have included Operation Food Search and Make a Wish Foundation. In 2012, the amount provided to charitable organizations totaled \$1,229,045.

b. Petitioner created its Panera Cares Cafes initiative to address hunger in United States. The cafes furthered Petitioner's tax-exempt purposes under section 501(c)(3) of the Code.

i. Petitioner was inspired to create a charitable program to directly address the issue of hunger and food insecurity after reviewing statistics from the United States Department of Agriculture demonstrating that one in six Americans face hunger and food insecurity.

ii. As stated by Petitioner's President, this means that "[w]hen one in ten adults is unemployed in this country, you end up with kids who are hungry . . . in many instances, we're talking about middle-class neighborhoods where people are living hand-to-mouth . . . ."

iii. Petitioner modeled its charitable program on innovative concepts being pioneered by other charitable organizations that provide food in a donation-based, fair exchange restaurant setting and that serve everyone, regardless of ability to pay.

iv. In May 2010, Petitioner began its Panera Cares Cafes initiative with the goals of feeding the hungry, fighting food insecurity, educating about food insecurity, and training high-risk youth and

individuals with special needs so they could obtain gainful employment.

- v. In furtherance of its mission, Petitioner expanded the Panera Cares Cafes initiative to five cafes located in Clayton, MO, Dearborn, MI, Portland, OR, Chicago, IL, and Boston, MA.
- vi. Petitioner's Panera Cares Cafes furthered charitable purposes, such as relieving the poor and distressed, by providing creating a sustainable model for providing free sustenance to less fortunate members of the community, including the unemployed, underemployed, poor, elderly, and homeless.
- vii. Petitioner provided grants and assistance to individuals by providing free food through its Panera Cares Cafe program, in an amount totaling \$2,638,973 in 2012.
- viii. Petitioner also designed its Panera Cares Cafes to raise awareness about food insecurity and educate members of the public regarding food insecurity. For example, the cafes contained educational information regarding food insecurity. More importantly, the very act of operating an establishment where individuals lacking means to purchase food stood in lines with less vulnerable members of their



community created a valuable educational experience to people who otherwise would rarely interact with someone who was hungry.

ix. Petitioner's Panera Cares Cafes furthered educational purposes by providing job training to high-risk individuals, who were referred to Petitioner by other charities.

x. Petitioner's Panera Cares Cafes furthered educational purposes by providing job training to individuals with developmental disabilities, who were referred to Petitioner by other charities.

xi. Petitioner provided job training, pursuant to the programs described above, to at least 42 individuals between 2010–2014.

c. Petitioner's activities were not characteristic of a trade or business ordinarily carried on by a for-profit commercial business.

i. Petitioner's Panera Cares Cafes provided meals for free.

ii. Consequently, Petitioner's Panera Cares Cafes consistently operated at a loss.

iii. Petitioner's Panera Cares Cafes had limited hours, closing much earlier than commercial restaurants. For example, as noted by the IRS Examination agent, the Clayton, MO location closed at 3:30 PM.

- iv. In contrast with the Petitioner's Panera Cares Cafes, the bakery-cafes operated by Panera, LLC typically operate from 6:00 AM until 9:00 PM.
- v. Petitioner's Panera Cares Cafes relied on the generosity of individuals and businesses for support.
- vi. Petitioner's Panera Cares Cafes provided individuals with information about the cost of the meals and accepted contributions from the public in any amount to assist in offsetting those costs.
- vii. Petitioner's Panera Cares Cafes accepted volunteer labor and received more offers for volunteer service than it could use.
- viii. Petitioner's Panera Cares Cafes operated with donated equipment and furnishings.
- ix. Petitioner's Panera Cares Cafes had a limited menu.
- x. Petitioner's Panera Cares Cafes served food that was donated to Petitioner.
- xi. Petitioner's Panera Cares Cafes generally served food that was not freshly baked or prepared (such as bread, bagels, and pastries), unlike the food offered by commercial restaurants.

d. The IRS erroneously alleged that Petitioner's Panera Cares Cafes did not serve charitable purposes because they were located in "affluent" areas.

i. The IRS cited no basis for its statement that the locations of Panera Cares Cafe locations were "affluent."

ii. In fact, Petitioner's Panera Cares Cafe were located in close proximity to census tracts identified as low-income.

iii. Petitioner's Panera Cares Cafe locations were strategically chosen for their accessibility to public transportation and proximity to locations that they believed would allow them to serve individuals in need of food assistance (such as homeless shelters, courthouses, and libraries).

e. The IRS erroneously alleged that the provision of free meals with dignity does not further charitable purposes.

i. Petitioner's Panera Cares Cafes operated similarly to other charitable organizations that feed the hungry.

ii. Many soup kitchens provide free food with no questions asked and no income verification.

- iii. Other organizations that are tax-exempt under section 501(c)(3) of the Code provide food for free in a restaurant-like setting and accept volunteer time, food donations, and monetary donations.
- f. The IRS erroneously asserts, without support, that Petitioner served private interests because of its relationship with a for-profit entity, Panera, LLC.
  - i. Petitioner disclosed its relationship with Panera, LLC in its application for tax-exempt status. *See* Ex. 3 at 10.
  - ii. Petitioner reported this relationship in its annual Form 990, *Return of Organization Exempt from Income Tax*. A true and correct copy of Petitioner's Form 990 for the year under examination (2012), with Petitioner's TIN redacted in accordance with Rule 27(a), is attached hereto as Ex. 5.
  - iii. Petitioner's directors did not receive compensation for their services.
  - iv. Pursuant to a written cost sharing agreement, Petitioner reimbursed Panera, LLC for the wages of Panera, LLC's employees who worked at Petitioner's Panera Cares Cafes.
  - v. The reimbursement of wages was reasonable and did not result in a benefit to the for-profit entity.

- vi. The receipt of donations from a related entity is both permissible and common for charitable organizations.
- g. The IRS erroneously claimed, without evidence, that Petitioner was not supported by the public.
  - i. Petitioner received cash donations from a range of sources, including the general public and the related for-profit entity.
  - ii. Schedule A of Petitioner's Form 990 for 2012 clearly shows Petitioner received substantial donations from the general public and qualified as a publicly supported organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) of the Code. *See* Ex. 5 at 15.
  - iii. As described in section 1.170A-9(f) of the Regulations, an organization must pass one of two tests—the 33 1/3 percent test or the 10 percent plus facts and circumstances test—and it must meet these tests continually over a rolling five-year period to be a publicly supported organization under sections 170(b)(1)(A)(vi) and 509(a)(1) of the Code.
  - iv. Petitioner accurately calculated its public support on Schedule A of its Form 990 for 2012 in accordance with section 1.170A-9(f) of the Regulations, and exceeded the 33 1/3 percent test to qualify as a

publicly supported organization: its public support percentage equaled 57.85%.

h. Petitioner continues to engage in charitable activities that further exempt purposes under section 501(c)(3).

i. Petitioner currently grants funds to other charitable organizations in the areas of health and welfare; education; culture and arts; and civic and community organizations. Such grants further charitable purposes within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(2) of the Regulations.

ii. Petitioner informed the IRS that it was ceasing the operation of the Panera Cares Cafe program, with each of the locations having closed due to the significant costs associated with conducting the activity.

7. Petitioner furthered charitable and educational purposes within the meaning of section 501(c)(3) of the Code because it maintained a substantial charitable grant-making and assistance program, provided free food to the hungry, educated the public, and provided job training to high-risk individuals and individuals with developmental disabilities. Accordingly, Petitioner qualifies as an exempt organization under section 501(c)(3) of the Code.

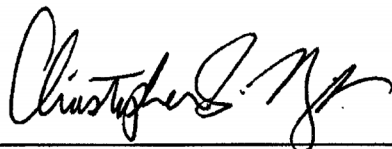
WHEREFORE, Petitioner respectfully asks the Court to:

1. Declare that Petitioner is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code;
2. Declare that Petitioner is classified as other than a private foundation under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code;
3. Award Petitioner its attorneys' fees and costs; and
4. Grant such other relief as may be appropriate.

Dated: March 15, 2019

Respectfully submitted,

CAPLIN & DRYSDALE, CHARTERED

By:  **ADMITTED**

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