



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities  
Box 2508  
Cincinnati, OH 45201

Date:  
02/20/2024  
Employer ID number:

Form you must file:

Tax years:  
All

Person to contact:

Release Number: 202420029  
Release Date: 5/17/2024  
UIL Code: 501.05-01

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(5). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit [www.irs.gov](http://www.irs.gov).

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:  
Letter 437  
Redacted Letter 4034  
Redacted Letter 4038



**Department of the Treasury  
Internal Revenue Service**

PO Box 2508  
Cincinnati, OH 45201

**Date:** December 27, 2023

**Employer ID number:**

**Person to contact:**

Name:

ID number:

Telephone:

Fax:

**Legend:**

B = Date

C = State

E = Name

F = Name

**UIL:**

501.05-01

Dear :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). Based on the information provided, we determined that you don't qualify for exemption under IRC Section 501(c)(5). This letter explains the reasons for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under IRC Section 501(c)(5)? No, for the reasons stated below.

**Facts**

You were formed on B in the State of C as a . According to your Certificate of Organization, you are authorized to transact business subject to all C laws applicable to your company and its business. Your Operating Agreement states that the primary purpose of the company is to provide logging and equipment repair work, forestry, and to reap the benefits of ownership and the revenues generated thereby, and the general purpose of the company is to engage in such other activities permitted under the laws of C.

Additionally, your Operating Agreement states that taxable income, gain, loss, deduction, or credit shall be allocated to the Member at the end of the Company year; provided, however, that if the Member has contributed property other than money to the company, the allocations shall be governed by federal law. It further states that the cash flow of the company may be distributed to the Member. Such distributions shall occur with such lesser or greater frequency as the Manager shall determine is consistent with the orderly administration of the business of the company.

Your Operating Agreement also states that upon the dissolution of the company and incident to the winding-up of the company's business and affairs, the Manager (or liquidator, as applicable) shall pay or make provisions for the payment of all liabilities and obligations of the company, actual or contingent, including amounts owed

to the member and all expenses of liquidation. Any amounts deemed necessary by the Manager (or liquidator) to provide a reserve for any unforeseen liabilities and obligations may, in the Manager's (or liquidator's) discretion, be deposited in a bank or trust company upon such terms and for such period of time as the Manager (or liquidator) may determine. Following the payment of or provision for the liabilities of the Company as aforesaid, the remaining assets of the company shall be distributed in the following order of priority: (i) to the payment of the Member of any amounts then distributable to it under Section 6 of this Agreement; and (ii) any remaining assets then to the Member.

In the Executive Summary of your Business Plan, you state that you are a newly established business in C providing logging services to several districts. It states you are wholly-owned by E and all operations are run by her husband, F. You will provide log harvesting services and timber thinning services while supplying the demand of logs to the mills in your servicing areas. Your mission is to not only provide these services to landowners but also educate them on the importance of reforestation and the significance it has on our planet and to future generations of loggers to come. It also states that the decision to start your own logging business has been a household topic for more than five years. It's a family legacy that you wish to continue and pass down to your children. It's something you can call your own, that you are truly passionate about and are confident in its future success. You declared that ultimately, being that E has complete ownership in the business, all assets will be passed down to the one and only son.

You state on the Form 1024 that you are a logging company, and your activity is primarily to harvest timber in and around the country. Specifically, you would offer clear cutting and thinning for both hardwood and softwood tracts. You plan to cut for landowners, foresters, timber cruisers, investors, yourselves, and mills. You can contract for when given the opportunity. You state that all of your time is dedicated to timber harvesting.

Your Form 1024 lists E as your only board member.

#### **Law**

IRC Section 501(c)(5) provides for the exemption from federal income tax of labor, agricultural or horticultural organizations.

IRC Section 501(g) provides for purposes of IRC Section(c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

Treasury Regulation Section 1.175-3 states the method described in Section 175 is available only to a taxpayer engaged in "the business of farming". A taxpayer is engaged in the business of farming if he cultivates, operates, or manages a farm for gain or profit, either as owner or tenant. For the purpose of Section 175, a taxpayer who receives a rental (either in cash or in kind) which is based upon farm production is engaged in the business of farming. However, a taxpayer who receives a fixed rental (without reference to production) is engaged in the business of farming only if he participates to a material extent in the operation or management of the farm. A taxpayer engaged in forestry or the growing of timber is not thereby engaged in the business of farming. A person cultivating or operating a farm for recreation or pleasure rather than a profit is not engaged in the business of farming. For the purpose of this Section, the term farm is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards.

Treas. Reg. Section 1.182-2 explains that a taxpayer engaged in forestry of the growing of timber is not thereby engaged in the business of farming. A person cultivating or operating a farm for recreation or pleasure rather than profit is not engaged in the business of farming. For purposes of Section 182 and this Section, the term farm is used in its ordinary, accepted sense and includes stock, dairy, poultry, fish, fruit, and truck farms, and also plantations, ranches, ranges, and orchards.

Treas. Reg. Section 1.501(c)(5)-1(a) provides that the organizations contemplated by IRC Section 501(c)(5) is entitled to exemption from income taxation are those which (1) have no net earnings inuring to the benefit of any member, and (2) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Treas. Reg. Section 48.6420-4 defines the term “trade or business of farming”. A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming.

Rev. Rul. 84-81, 1984-1 C.B. 135, held that the terms “farmers” and “farming” as used in Sections 61, 175, 180, and 182 of the Code and regulations do not apply to forestry. Consequently, the cutting of timber for its end use either lumber or newsprint is excluded from the definition of farming or fruit growing within the meaning of Section 521.

#### **Application of law**

##### **Your net earnings are inuring to your member**

Your Operating Agreement states that taxable income, gain, loss, deduction, or credit shall be allocated to your member at the end of the year. You further indicate that following the payment of or provision for your liabilities, your remaining assets shall be distributed in the following order of priority: (i) to the payment of the member of any amounts then distributable to it under Section 6 of your Agreement; and (ii) any remaining assets then to the member. Ultimately, the profits realized from your operations are passed on to your member, which is inurement.

Consequently, you are operating contrary to Treas. Reg. Section 1.501(c)(5)-1(a) which provides that the organizations contemplated by IRC Section 501(c)(5) as entitled to exemption from income taxation are those which have no net earnings inuring to the benefit of any member. You are formed as a for-profit company, and you make regular distributions of profits to your member. Because you are a for-profit organization and your earnings inure to the private benefit of your member, you do not qualify for exemption under Section 501(c)(5).

##### **Your primary activity is not described in IRC Section 501(c)(5).**

Your primary activity of harvesting timber is not described in IRC Section 501(g) which provides for purposes of subsection 501(c)(5), the term “agricultural” includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

Treas. Reg. Section 1.175-3 highlighted what is meant by being in the business of farming. A taxpayer is engaging in the business of farming if he cultivates, operates, or manages a farm for gain or profit, either as

owner or tenant. The regulations also state that, for the purpose of the Section, the term ‘farm’ is used in its ordinary, accepted sense and includes stock, dairy, poultry, fruit, and truck farms, and also plantations, ranches, ranges, and orchards. Furthermore, the regulation specifically stated that a taxpayer engaged in forestry or the growing of timber is not thereby engaged in the business of farming.

Treas. Reg. Section 1.182-2 explains that a taxpayer engaged in forestry or the growing of timber is not thereby engaged in the business of farming. Similarly, Treas. Reg. Section 48.6420-4 defines the term “trade or business of farming”, and it categorically states that a person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. Rev. Rul. 84-81 indicates that the cutting of timber for its end use either lumber or newsprint is excluded from the definition of farming or fruit growing within the meaning of Section 521. In applying the laws, you are operating outside the scope of what is considered agricultural.

### **Conclusion**

Based on the information provided, we conclude that you are not operated as an exempt organization described in IRC Section 501(c)(5) for two reasons. First, you are formed as a for-profit business, and you provide services for a fee in a manner which inures to the benefit of your member. Second, your primary activity of harvesting timber (forestry) is not described under Section 501(g). Accordingly, you do not qualify for recognition of exemption under Section 501(c)(5).

### **If you agree**

If you agree with our proposed adverse determination, you don’t need to do anything. If we don’t hear from you within 30 days, we’ll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

### **If you don't agree**

You have a right to protest if you don’t agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

#### **For an officer, director, trustee, or other official who is authorized to sign for the organization:**

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven’t already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.