



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **200930049**  
Release Date: 7/24/09  
Date: Apr 30 2009  
UIL Code: 501.00-00

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
Tax Years:

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.

Since 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.

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.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038(CG) (11-2005)  
Catalog Number 47632S

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,

Rob Choi  
Director, Exempt Organizations  
Rulings & Agreements

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



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: Feb 25 2009

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

M = Organization

N = State

t = Date #1

u = Date #2

v = Date #3

w = Date #4

x = City, State

UIL #'s

501.00-00

501.03-00

501.03-05

501.03-33

501.04-00

Dear

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

**Issue:**

Do you, M, meet the requirements for tax exemption under section 501(c)(3) of the Code?

**Facts:**

The evidence submitted indicates that you were incorporated under the laws of the State of N on u.

In your application, filed t, you state that during 2007 your activities included the following:

1. Start up-funds – this activity consists of the organization sending out a request to all area

business owners and churches to inform the community about its activities

2. Sledding Activity – This activity consisted on members of the community, adults and children, sledding in 10 degree weather. The activity also included a bonfire, cookout, and refreshments.
3. St Patrick Day Social – This activity consisted of a dance, face painting, playing cards, and cribbage games.
4. Supporting the development of a Community Development Corporation
5. Easter Egg Hunt and Egg Coloring Event
6. Arbor Day/Earth Day Tree planting
7. Softball games for family and youth recreation
8. Keep x – This activity consisted of youth and family cleaning area streets for the July 4<sup>th</sup> celebrations in x
9. Summertime Community Recreation – A full day summer recreational activity that will include a cookout, a visit to an area park, fishing, and swimming
10. Story Time at the Pavilion – Stories, crafts, and refreshments one time per week during summer months
11. July 4<sup>th</sup> Celebrations
12. Community End-of Summer Ball Game and Picnic
13. Community Halloween/Autumn Festivities
14. Thanksgiving and Veteran’s Day events – These activities consisted of hosting a special dinner to thank the people and organizations that supported the organization throughout the year
15. Community Christmas Function – This activity consisted of having families make crafts with their children and to share the joys of the holiday season

The activities planned during 2008 were as follows:

1. Ice Skating Rink – This activity was to be conducted by raking snow, banked upwards on the sides and then frozen to keep its “edge”
2. Sledding Activity – This activity consisted on members of the community, adults and children, sledding in 10 degree weather. The activity also included a bonfire, cookout, and refreshments.
3. Ice Fishing Excursion
4. St Patrick Day Social – This activity consisted of a dance, face painting, playing cards, and cribbage games.
5. Supporting the development of a Community Development Corporation
6. Easter Egg Hunt and Egg Coloring Event
7. Arbor Day/Earth Day Tree planting – the organization plants trees in city parks. The trees not planted in city parks are given to the residents of x for their personal use.
8. Softball Games for family and youth recreation
9. Keep x Beautiful – This activity consisted of youth and family cleaning area streets for the July 4<sup>th</sup> celebrations in x
10. Summertime Community Recreation – A full day summer recreational activity that will include a cookout, a visit to an area park, fishing, and swimming

11. July 4<sup>th</sup> Celebrations
12. Community End-of Summer Ball Game and Picnic
13. Community Halloween/Autumn Festivities
14. Thanksgiving and Veteran's Day events – This activities consisted of hosting a special dinner to thank the people and organizations that supported the organization throughout the year
15. Community Christmas Function – This activity consisted of having families make crafts with their children and to share the joys of the holiday season

Fundraising activities included cookie sales, candy bar sales, and an annually scheduled Memorial Saturday Car Wash/Bake, Craft, and Rummage sale. You also submitted the following information concerning your activities:

| Activity                               | % time devoted to activity | % funds devoted to the activity |
|--|----------------------------|---------------------------------|
| Sledding activity                      | 7                          | 4                               |
| St. Patrick's Day Social               | 7                          | 7                               |
| Easter Egg Hunt and Egg Coloring Event | 7                          | 10                              |
| Arbor Day/Earth Day Tree Planting      | 7                          | 2                               |
| Softball Games                         | 20                         | 30                              |
| Keep x Beautiful                       | 7                          | 9                               |
| July 4 <sup>th</sup> Celebration       | 9                          | 10                              |
| Community Halloween/Autumn Festivities | 7                          | 10                              |
| Thanksgiving (Veteran's Day)           | 7                          | 4                               |
| Story Telling:                         | 15                         | 4                               |
| Ice Rink                               | 7                          | 20                              |
| <b>Total:</b>                          | <b>100%</b>                | <b>110%</b>                     |

You submitted the following financial information with your application (Form 1023).

|                                       | Year |    |     |    |    |    |     |
|---------------------------------------|------|----|-----|----|----|----|-----|
|                                       | 20   |    | -20 |    | 20 |    | -20 |
| <b>Income</b>                         |      |    |     |    |    |    |     |
| Contributions                         |      | \$ |     | \$ |    |    |     |
| Membership income                     |      | \$ |     | \$ |    | \$ |     |
| Gross receipts from exempt activities |      |    |     |    |    |    |     |
| <b>Total Income</b>                   |      | \$ |     | \$ |    | \$ |     |
| <b>Expenses</b>                       |      |    |     |    |    |    |     |
| Contributions Paid                    |      | \$ |     | \$ |    |    |     |
| Other Expenses                        |      | \$ |     | \$ |    | \$ |     |
| <b>Total Expenses</b>                 |      | \$ |     | \$ |    | \$ |     |

During a phone conversation with your representative on June 19, 2008, the Service indicated that your activities appeared to be primarily social and recreational in nature and that you may qualify under section 501(c)(4) of the Code. Your representative indicated that your organization was only interested in 501(c)(3) exemption due to the deductibility of contributions to such organizations. You therefore declined to apply under section 501(c)(4).

**Law:**

501(c)(3) Law

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of corporations, and any community chest, fund, or foundation, organized and operated exclusively for charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Furthermore, section 501(c)(3) of the Code sets forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3) of the Code.

Treasury Regulations §1.501(c)(3)-1(b)(1)(i)(a) states that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limits the purposes of such organization to one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code 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; promotion of social welfare.

Revenue Ruling 59-310, 1959-2 CB 146 states that a nonprofit corporation organized for the purpose of establishing, maintaining and operating a public swimming pool, playground and other recreation facilities for the children and other residents of a community is exempt from Federal income tax under section 501(c)(3). The ruling states that, according to the generally accepted definition, "charity" in the legal sense of the term includes erecting or maintaining public buildings or works. The foundation described in the ruling is dedicated to a charitable purpose, namely, to "establish, equip, maintain and operate a public beach, playground and bathing facilities".

Rev. Rul. 65-2; 1965-1 C.B. 227 clarified that exemption from Federal income tax under section 501 (c) (3) of the Internal Revenue Code of 1954 may be granted to an organization which is organized and operated for the purpose of teaching a particular sport to children by holding

clinics conducted by qualified instructors in schools, playgrounds, and parks, and by providing free instruction, equipment, and facilities. The foundation was formed to provide educational and character building programs for the children of the community. Its activities consisted of conducting clinics for student players in elementary and high schools, at playgrounds, and at parks, under the guidance of qualified instructors. It also held coaching clinics for instructors of the student players. It provided free instruction in schools, playgrounds, and parks and furnished free equipment to those children who were unable to afford such equipment. It also stimulated interest in its program through the use of film and other instructional devices. The organization encouraged youth participation in tournaments; arranged for attendance of players and instructors at state tournaments; and encouraged good sportsmanship. Its program and facilities were available to any child in the community who desired to participate, was physically able, and had reached the qualifying age level. Funds of the organization were derived entirely from contributions by the interested public. Disbursements were for equipment, coaching clinic expense, instructors, movies, secretarial salaries, and general office and operating expenses.

Rev. Rul. 68-14; 1968-1 C.B. 243, indicated that a nonprofit organization organized and operated to preserve and develop the beauty of a city may be exempt from Federal income tax under section 501(c) (3) of the Internal Revenue Code of 1954. The nonprofit organization was formed to promote and assist in city beautification projects and to educate the public in the advantages of street planting. The organization planted trees in public areas for which the city did not have sufficient funds; cooperated with municipal authorities in all phases of street tree planting and in programs to keep the city clean; educated the public in the advantages of tree planting through newspapers, radio, and distributed literature; encouraged architects and builders to include planting with any new building or remodeling projects; and supported other charitable and educational organizations whose primary interest was to preserve and develop the beauty of the city.

Revenue Ruling 85-1, 1985-1 CB 177 states that lessening of the burden of government occurs only if the governmental unit acknowledges the activities of the organization to be its burden and the organization actually lessens such governmental burden. This objective manifestation may be evidenced by substantial involvement in and oversight of the organization's activities by the governmental unit. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government.

#### 501(c)(4) Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Revenue Ruling 66-179, 1966-1 CB 139 describes situations under which garden clubs may qualify for exemption from Federal income tax under section 501 of the Internal Revenue Code of 1954. Situation 1, describes a garden club qualifying under section 501(c)(3) of the Code. In Situation 1, the garden club is formed for the purposes of instructing the public on horticultural subjects and stimulating interest in the beautification of the geographic area. In Situation 2, the facts are the same as in Situation 1 except that a substantial part of the organization's activities, but not its primary activity, consists of social functions for the benefit, pleasure, and recreation of its members.

Revenue Ruling 67-109, states that a nonprofit corporation organized and operated exclusively for the purpose of establishing and maintaining a roller skating rink as a recreational facility for the benefit and use of the residents of a particular county, in a county-owned building which it occupies rent free in cooperation with the county government, may qualify for exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954 where the rink is open to the general public upon payment of such nominal dues and admissions charges as are needed to defray operating expenses.

Revenue Ruling 68-118, 1968-1 CB 261 states that a nonprofit organization that stimulates the interest of youth in the community in organized sports and for which membership in the organization is open to all adults in the community may qualify for exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954.

Rev. Rul. 68-224; 1968-1 C.B. 262, detailed a nonprofit organization that conducted an annual festival centered around regional customs and traditions that qualified for exemption from Federal income tax under section 501(c) (4) of the Internal Revenue Code of 1954. The organization was located in a ranching community of a Western state. The organization owned a parcel of ground on which members, through donated labor and time, have constructed reviewing stands as well as animal pens and chutes. The primary purpose of the organization was to conduct an annual festival that depicts regional customs and traditions.

Revenue Ruling 75-286, 1975-2 CB 210 states that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, will not qualify for exemption under section 501(c)(3) of Code but may qualify under section 501(c)(4).

## **Application of Law**

### **501(c)(3) Law**

Section 501(c)(3) of the Code sets forth two main tests for qualifies for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). You have failed both tests.

The Articles of Incorporation filed with the State of N Secretary of State on u does not include a purpose or dissolution clause.

The document entitled "Articles of Incorporation" dated v and the document entitled "Amended Article of Incorporation" dated w both contain language that complies with the 501(c)(3) organizational test. However, both show no evidence of filing with the State of N.

Therefore, you are not organized exclusively for exempt purposes as required by section 1.501(c)(3)-1(b)(1)(i)(a) of the regulations and your assets are not dedicated to an exempt purpose as required by section 1.501(c)(3)-1(b)(4) of the regulations.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes. Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides that the term charitable includes relief of the poor and distressed or underprivileged, lessening of the burdens of governments, and promotion of social welfare by conducting programs to combat community deterioration and juvenile delinquency. You have not provided evidence that you are primarily operated for any of the aforementioned charitable purposes.

Your activities are not similar to those in Revenue Ruling 59-310 since your organization has not erected or maintained public buildings as part of your activities.

You are not like the organization in Revenue Ruling 65-2. In the ruling, the organization's primary purpose was to instruct children regarding a particular sport. Your primary activities are social and recreational. Your sporting activities are open to all ages, not just children, and are not primarily for educational purposes.

You are not like the organization in Revenue Ruling 68-14. In the ruling, the organization, by planting trees in public areas and assisting municipal authorities in their programs to plant trees and keep the city clean, was lessening the burdens of government. The organization's informational program directed to the public, architects, and builders was educational. The overall effect of these activities was to combat community deterioration. In your case, you have no such informational program and an insubstantial amount of your time is spent planting trees in city parks, with excess trees given to residents for their personal use.

You have not established that your activities lessen the burden of government as described in Revenue Rulings 85-1 since you have not proven that a governmental unit considers your activities to be its burden and that the activities actually lessen such governmental burden.

#### 501(c)(4) Law

However, based on the activities listed in your application, you may qualify for exemption as an organization described under section 501(c)(4). However, as mentioned previously, you declined to submit an application for section 501(c)(4) exempt status.

A substantial portion of your activities are conducted for the purposes of civic betterment and social improvements and based on this information; it appears that you are similar to the organization described in Revenue Ruling 66-179, Situation 2. The organization described in Revenue Ruling 66-179, Situation 2 qualified for exemption under 501(c)(4) of the Code.

Your activities are similar to those described in Revenue 67-109 since its activities are not conducted in a facility owned by you .

Since your softball games are for both the youth and adults in your community, it appears that your activities are consistent with Revenue Ruling 68-118.

You are similar to the organization in Revenue Ruling 68-224. In the ruling the organization, by conducting an annual festival centered around regional customs and traditions, provided recreation for the community, publicized the community and attracted persons to it, promoted community growth, and provided a means whereby citizens expressed their interest in local history, customs, and traditions. Similarly, a substantial part of your activities are centered around annual community celebrations.

Your activities are similar to those described in Revenue Ruling 75-286 since some of your activities consists of beautifying certain areas by planting trees and cleaning the area to be used for the annual July 4<sup>th</sup> parade.

### **Applicant's Position**

Your letter dated December 17, 2007, and letters received by the Service on April 21, 2008 and May 13, 2008 outline your position with regard to qualification for tax exemption under section 501(c)(3) of the Code. You conclude that your activities are exclusively for charitable purposes within the meaning of 501(c)(3) of the Code.

You state that although the filed copy submitted with the application does not meet the organizational requirements of section 501(c)(3), the amended Articles of Incorporation do meet the requirements and have been submitted to the State of \_\_\_\_\_ Secretary of State's office.

You indicate that you meet operational test under section 501(c)(3) of the Code. You state that the \_\_\_\_\_ h area is a very impoverished rural area where a significant number of households have children either living with single mothers or are not in parental custody. A significant number of residents within the area are on probation for felonies due to illegal drug use. The area has significant unemployment and there is no major employer within the city. There are also no organized youth activities in the area. You state that your activities are similar to those listed in Revenue Rulings 65-2 and 68-14.

You further state that your activities are not primarily social and/or recreational in nature and are conducted to benefit the community as a whole. Your activities are not consistent with an organization described under 501(c)(4) of the Code, but are charitable and/or educational in nature. The activities are conducted in a very impoverished rural area and many of the events that are social and/or recreational in nature are fundraising events, not activities of the organization.

### **Service Response to Applicant's Position**

Your original Articles of Incorporation do not meet the organizational requirement of 501(c)(3) of the Code. You stated that the Articles of Incorporation were amended to meet the organizational requirement. However, you did not submit a conformed copy of the amended Articles of Incorporation to substantiate that the document was filed. Since a conformed copy of the amended Articles of Incorporation was not submitted, you do not meet the organizational requirement of 501(c)(3) of the Code.

You have not established your activities are charitable within the meaning of 501(c)(3) of the Code. You have not established how the activities described in its application combat juvenile delinquency, combat community deterioration, or relieve the burdens of government within the meaning of 501(c)(3).

Based on the application submitted, most activities are only conducted one time per year. There is no formal education or instruction provided. The activities are conducted exclusively for recreational and/or social purposes.

You contend that your activities are similar to those conducted in Revenue 65-2; however, you have not established how the activities are educational or charitable in nature. In addition, you have not established how the activities are conducted for the purposes of building character or educating individuals and/or youth.

You have not established how the activities have combated juvenile delinquency. While youth may participate in many of the activities, the activities are open to all members of the community. You have not established how the activities provide relief to the poor and distressed.

You have not established that any of your activities lessen the burdens of government. You have not established your activities are activities that a governmental unit considers to be its burdens and that the activities actually lessen such governmental burden.

You have not established how your activities combat community deterioration. You have not established how cleaning a city prior to the July 4<sup>th</sup> Celebration is conducted for the purpose of combating community deterioration. In addition, you have not established how receiving trees to plant on public and privately owned property is charitable within the meaning of 501(c)(3) of the Code.

You contend that the July 4<sup>th</sup> Celebration, Community Halloween Autumn Festivities, and the Thanksgiving/Veteran's Day activities are only conducted for fundraising purposes. However, you have not established that the activities are not an integral part of its program. During these activities you conduct recreational activities. You have not established how these activities differ from other recreational and social activities conducted by the organization. The activities are outside the scope of a fundraiser.

You contend that the Community Christmas Function is conducted to relieve poor, distressed, and underprivileged children. However, you state that the activity is conducted to help families make simple crafts alongside their children. Based on the description of the activity, the activity does not bring relief to the poor and distressed and the underprivileged to the children who would have little else at Christmas. Based on this information, the activity is not charitable in nature.

### **Conclusion**

Based on the facts presented above, we hold that you do not meet the requirements for tax exemption under section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code.

### **Protest Rights**

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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may 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,

Robert Choi  
Director, Exempt Organizations  
Rulings & Agreements