



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **201144030**  
Release Date: 11/4/2011

Date: 8/10/2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-05; 501.03-22

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.

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. Your exemption under section 501(c)(5) remains in effect along with your Form 990 filing requirements.

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, 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.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G Lerner  
Director, Exempt Organizations

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



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DIVISION

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

Date: 8/10/2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = Name of State

C = Name of Show

D = Name of Breed

F = Date

G = Name of Association

H = Name of Association

J = Name of Show

K = Name of Show

**UIL:**

501.03-05

501.03-22

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 with respect to your tax-exempt status is set forth below.

**Issue:**

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons explained below.

**Facts:**

You were incorporated as G under the laws of the state of B on F. You were granted exemption under section 101(9) of the Revenue Act of 1934 in 1946. Subsequently, this was changed to exemption under section 501(c)(5) of the Code. You filed an amendment to your Articles of Incorporation to change your name from G to H, your current name.

Your purposes as stated in your articles of incorporation in pertinent part are to foster, promote, and extend the use and breeding of, and dealing in, D in the state of B and elsewhere, by your members and others, and to afford your members social, fraternal, literary and benevolent aid and assistance in so doing.

Your Bylaws and your response regarding your activities indicate your objectives and purposes are to provide a sound base from which to direct a program of member education, promotion, public relations and information. In addition, you maintain general dairy industry acceptance of registered D as a result of the breed's genetic and economic contributions through participation in D breed improvement programs. You encourage each member to adopt effective techniques in advertising and merchandising and in doing so promote the breed. You also state you support effective legislation and the enforcement of laws regarding eradication of contagious bovine diseases. You also encourage club members to actively support their local milk marketing agencies and effective national programs of dairy marketing and research.

You state your purpose has been in effect since 1928 and has been applied in a consistent manner since then. You confirm your purpose and activities have never been changed. The activity has consistently promoted the D Breed since 1928 and the entire breed is equally promoted throughout the northeast with concentration in B State.

Your mission statement is "to promote the D breed for the economic and social benefit of junior and senior members."

You are a membership organization and the membership is open to any individual, firm, partnership or corporation interested in, or engaged in the D breeding in B. Any individual under 21 years of age as of January 1, of the current year, who is interested in D may become a junior member. Those who are over 21 years of age are referred to as senior members. Membership fees are \$50 per year. If a member has D as milking animals, they are charged one dollar per head with a cap of \$300. If someone would simply like to subscribe to the magazine, which is rare, they can pay \$25 per year. Junior members pay a discounted membership fee. In addition you also have Associate members who pay the same fee as regular members but do not have voting privileges. However they can register and transfer animals at member rates without joining the association..

In exchange for the dues, a member receives a monthly subscription to your magazine. The general public may subscribe only for the magazine without becoming a member and just pay for the magazine. Your magazine is used to promote the breed through articles and directly related advertising. Members receive discounted subscription to several magazines related to the D Breed. In addition they have voting rights in the County and State organizations. Members are eligible to get awards for breeding and also can market cattle through a number of state sponsored sales as well make use of your private treaty connections. Members can also advertise and sell their breed through your magazine. The advertising rate card shows the various sizes and rates charged.

You provide scholarships and financial aid for educational purposes to junior members attending an accredited college who pursue a career in your industry or an industry related field. The scholarship program is publicized on your website and through 4-H leaders.

You hold several exhibitions and conventions such as an annual K exhibition , annual senior and junior D conventions, and an annual all-breeds convention. Your exhibitions follow C's Code of Ethics guidelines. You promote the D breed and provide awards to breeders by sponsoring the annual K exhibition/show and the J. The purpose of the J is to stimulate interest in the breeding and exhibiting of outstanding registered D's. Active Master Breeder and Retired Master Breeder awards are given to the current or retired member who exemplifies the standards and goals of breeding registered D's.

The K is an event where members and an exhibitor registers his or her animals for competition, exhibition, or sale for a fee.

Each April you host four days of all dairy breed shows and sales. Last year 840 animals were shown and 200 were sold. You are responsible for all costs of the K and the money comes from entry fees and sponsorships.

Your monthly magazine indicates you aid your membership in promoting and merchandising registered D, as well as cultivating ideas and participation amongst your members. Editorial content is focused on supporting the perpetuation of the highest breed standards and reporting on modern dairy herd management. Regional and national shows, sales and other related D and dairy industry events are reported. Advertising is usually provided to various customers, farm related businesses and farmers who want to promote their goods and services. The advertisers are all related to farm related ventures that promote the D breed.

You conduct a breeder recognition program and present awards to members who exemplify the standards and goals of breeding registered D's and to recognize the significant accomplishments of young registered D breeders.

You participate in farm days, a youth show fair, a showmanship contest, an open show & dairy day fair, a world dairy expo, a harvest sale, and a national junior show. These fairs or events are organized by other organizations. You attend the annual state convention and the annual national convention. Your activities include dairy day; judging; dairy bowl; club sales; tours/exchanges; movie night; floats; local shows; spring, fall or awards banquets; and summer picnic.

You maintain a registry of the breed for members and a breeder directory. You maintain a website to promote the activities and interests of your members and prospective members and breeders.

You provide scholarships to junior members attending or admitting at an accredited college who pursue a career in the industry or in an industry related field.

You formed several committees including a membership committee, a breed improvement and education committee, a sales committee, a publications committee, a show committee, a K coordinating committee, milk and legislative committee, and an animal health and welfare committee.

You state that you will support effective legislation and the enforcement of laws regarding

eradication of contagious bovine diseases.

You are also affiliated with the national organization which is exempt under section 501(c)(5) of the Code. A portion of the dues you collect from your members are paid to the national organization.

Based on financial data you provided for fiscal year 2007, 34% of your income comes from advertising revenue and another 21% comes from membership fees. Another 20% comes from show income and subscriptions to your magazine. Approximately another 10% comes from commissions. Contributions make up a little over 1% of your total revenue. Breed Promotion, Breed improvement, magazine publishing and other breed related expenses amount for 38% of your total expenses and personnel and administrative expenses such as salaries, payroll and office expenses make up 48% of your total expenses.

You spend 95% of time to promote your activities while five percent of time is spent on charitable activities. You state 99% of funds promote your activities and one percent of funds are used for charitable purposes such as scholarships.

**Law:**

Section 501(a) of the Code provides that organizations described in section 501(c) shall be exempt under this subtitle.

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order for an organization to be exempt under section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Revenue Ruling 66-179 1966-1 C.B. 139 an organization that was incorporated as a nonprofit organization for the purposes of instructing the public on horticultural subjects and stimulating interest in the beautification of the geographic area qualified for exemption under

section 501(c)(3). In furtherance of these purposes, the organization (1) maintains and operates a free library of materials on horticulture and allied subjects, (2) instructs the public on correct gardening procedures and conservation of trees and plants by means of radio, television, and lecture programs, (3) holds public flower shows of a noncommercial nature at which new varieties of plants and flowers are exhibited, (4) makes awards to children for achievements in gardening, (5) encourages roadside beautification and civic planting, and (6) makes awards for civic achievement in conservation and horticulture.

In Better Business Bureau v. United States, 326 U.S. 278 (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

In First Libertarian Church v. Commissioner of Internal Revenue, 74 T.C. 396 (1980), the court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a non-exempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non-exempt purpose. The court explained that "clearly the regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) will be denied."

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under section 501(c)(3) of the Code. Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

In Manning Association v. Commissioner of Internal Revenue, 93 T.C. 596 (1989) the court found that an association that was operated for exempt educational activities, based largely upon a historic Manning homestead and historic artifacts, was not exempt under section 501(c)(3) of the Code because the Association's operations were also conducted for the benefit of members of the Manning family, a nonexempt purpose that was found to be substantial in nature. The court stated that "even in the presence of some activities that were truly motivated by exempt purposes, the concomitant presence of substantial non-exempt purposes destroy[ed] the exemption."

### **Application of Law:**

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable or educational purposes.

### Organizational Test

Your Articles of Incorporation do not contain the requisite purpose and dissolution provisions of section 501(c)(3) of the Code. Your Articles of Incorporation contain purposes that are broader than the purposes specified in section 501(c)(3) and section 1.501(c)(3)-1(b)(1)(iv) of the regulations. Your purposes are to foster, promote, and extend the use and breeding of, and dealing in, D in the state of B and elsewhere

### Operational Test

Although you do conduct some charitable and educational activities, these activities constitute a very minimal percentage of your operations. Your exclusive activity is the promotion and improvement of the Breed D for the economic and social benefit of your members. Your members are all registered Breed D owners and you encourage them to adopt effective techniques in advertising and merchandising and promoting the breed. Maintaining general dairy industry acceptance of registered D, encouraging and promoting the breed, and supporting local milk marketing agencies are not activities that are described in section 501(c)(3) of the Code. Therefore, you are not described on section 1.501(c)(3)-(1)(c)(1) of the Income Tax Regulations.

You are not like the organization in Revenue Ruling 66-179 that qualified under 501(c)(3). Your exclusive purpose is the promotion of the Breed D. Your charitable or educational activities are insubstantial in nature.

Like the organization in Better Business Bureau v. United States, supra, you have a substantial non-exempt purpose of promoting Breed D

You are like the organization in First Libertarian Church v. Commissioner of Internal Revenue, supra, and St. Louis Science Fiction Limited v. Commissioner, supra, because your exclusive purpose is the promotion, exhibition, and marketing of breed D, and not exclusively charitable and educational. In fact, the exhibitions and conventions are for the promotion of the breed and venues for members to sell their herd. Your magazine provides only information about the breed of animal and advertisement of members' businesses. Your website maintains information about the breeder directory and the registry of the breed.

By allowing your members to advertise and sell their livestock on your magazine, you are also operating for the private benefit of your members, and therefore similar to the organization in Manning Association v. Commissioner of Internal Revenue, supra.

### **Applicant's Position:**

You indicate you are already a 501(c)(5) organization. You are not interested in becoming anything other than a 501(c)(3) entity for B state purposes. You state B State will not give you any Sales Tax Relief unless you are a 501(c)(3) organization. Because of the education and nature of your organization, you feel you have grounds to be considered under 501(c)(3).

You emphasize your purpose has been in effect since 1928 and has been applied in a consistent manner since then. You also provide that 95 percent of time and other resources of your organization are devoted to the promotion of D breed and five percent of the time involves

charitable activities or one percent of the funds are provided to charitable purposes such as a scholarship program.

You provide that most of your purpose centers on educating your members and the general public on the D breed by offering information about rearing, feeding and management of livestock or similar pursuits. You further claim that you promote and educate the general public through your magazine efforts as the magazine is solely pertaining to the D breed.

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

Regardless of your claims that your magazine and activities further educational purposes and your scholarship program furthers charitable purpose of section 501(c)(3), the facts show that only an insubstantial part of your activities are educational or charitable. Your exhibitions and conventions are for the promotion of a particular breed namely Breed D. Your magazine provides an opportunity for your members to advertise and sell their registered D's. These activities and purposes are not those that are described in section 501(c)(3) of the Code.

Your magazine was established in 1946 to assist your members in promoting and merchandising Registered D Breeds, and supporting the perpetuation of highest breed standards.

You are a membership organization made up of members who own the D Breed for their economic and social benefit. Your activities are exclusively focused on the breeding, showing, and sales of the D Breed and each year you conduct breed shows at which members registered D are shown and sold.

**Conclusion:**

Organizational

Base on the above, we find that you are not organized and operated for exempt purposes within the meaning of section 501(c)(3) of the Code. Specifically, you do not meet the organizational test for exemption because your organizing document does not contain the necessary 501(c)(3) language.

Operational

You do not meet the operational test for exemption since your activities/purpose is the promoting, showing and sale of the D breed on behalf of your members, majority of whom are owners of the D breed. Accordingly we conclude you do not qualify for exemption under section 501(c)(3) of the Code.

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*.

*Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:*

***"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."***

*The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.*

*Your appeal will be considered incomplete without this statement.*

*If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.*

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,

Lois G Lerner  
Director, Exempt Organizations

Enclosure, Publication 892