



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201304011**
Release Date: 1/25/2013

Date: **November 2, 2012**

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL Code: 501.03-00; 501.03-08; 501.03-25; 501.33-00

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,

Holly O. Paz
Director, Exempt Organizations
Rulings and 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: September 11, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B- State

C- date

UIL:

501.03-00

501-03-08

501.03-25

501.33-00

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.

Issues

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

Facts

You were incorporated on C, in the state of B.

Article 2 of your Articles of Incorporation states that you are organized to "1) create a gathering spot and opportunity for social interactions for area residents, 2) be a profitable outlet for local farmers and craft vendors, and 3) provide a predictable, ample selection and variety of high quality, fresh, locally grown produce and crafts for customers"

These purposes are reiterated in your Constitution and Bylaws, in the brochure submitted with your application, and in the materials you provide to your vendors.

You are operating a farmer's market which is held weekly from May through October. The market is a community gathering place where area residents can buy fresh, locally grown food products directly from farmers. Neighbors are able to exchange news and recipes, learn how to prepare healthy meals with local foods, and re-establish ties with the seasonal growing cycle. With a direct small-scale regional outlet for their produce, farmers have the flexibility to try new crops and organic/sustainable growing methods.

The market also includes special events, such as several special events where market attendees could learn about healthy living and eating; food, gardening and nature; personal and community safety; food preservation; and local nonprofits.

Vendors attend the market during the May to October season. In a recent year less than 3% of these vendors were tax-exempt organizations. The others were for-profit businesses. Many vendors are gardeners, small farmers and homemakers that do not declare a formal business name. Vendors are chosen based on the rules and regulations found in your application. Vendors pay fees that range from \$5 per week to \$100 per season for premium spots. None of the board members currently operate a business at the market.

Information submitted with your application states that you will increase low-income individuals' access to fresh food. Specifically, there will be a box where farmers or customers can donate food, which will then be delivered to a local food pantry. Currently, you collect about 10 pounds of food weekly. You will also feature an Electronic Benefits Machine where people can use their government supplied food assistance cards to exchange for wooden coins that can be used like cash at the market. The area you serve has not been declared economically distressed.

The financial data submitted shows that approximately 90% of your revenue is received from stall rentals. The remaining 10% is received from gifts, grants and contributions. Your expenses include general overhead items such as occupancy, advertising, insurance,

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

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 that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3) -1(d)(1)(ii) of the regulations requires that the applicant organization must show that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders, of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 71-395, 1971-2 C.B. 228. A cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3) of the Code.

In Rev. Rul. 73-127, 1973-1 C.B. 221, the Service held that an organization that operated a cut-price retail grocery outlet and allocated a small portion of its earnings to provide on-the-job training to hard-core unemployed did not qualify for exemption. The corporation was formed to operate a retail grocery store to sell food to residents of a poverty area at prices substantially lower than those charged by competing grocery stores, to provide free grocery delivery service to residents who need it, to participate in the Federal food stamp program, and to provide job training for unemployed residents. The organization's purpose of providing job training for hard-core unemployed was charitable and educational within the meaning of the common law concept of charity; however the organization's purpose of operating a retail grocery store, where food was sold to residents of a poverty area at low prices, was not recognized as a charitable purpose under the basic common law concept of charity. The ruling went on to say the operation of the store and the operation of the training program are two distinct purposes. Since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

In Rev. Rul. 76-94, 1976-1 C.B. 171, the Service held that an exempt organization's operation of a retail grocery store as part of its therapeutic program for emotionally disturbed adolescents, almost fully staffed by the adolescents, and on a scale no larger than was reasonably necessary for the performance of the organization's exempt functions, was not unrelated trade or business.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Nelson v. Commissioner, 30 TC. 1151, 1154 (1958), the court held that an applicant for tax exempt status under section 501(c)(3) has the burden of showing it "comes squarely within the terms of the laws conferring the benefit sought."

In American Institute for Economic Research v. United States, 302 F.2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analysis of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The Court noted that education is a broad concept, and assumed that the organization had an educational purpose. The Court concluded, however, that the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was more indicative of a business than that of an educational organization. The Court held that the organization had a

significant non-exempt commercial purpose that was not incidental to the educational purpose and that the organization was not entitled to be regarded as exempt.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision, T.C. Memo. 1990-484, that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church does not qualify under IRC 501(c)(3). The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including that the operation were presumptively commercial. The organization competed with restaurants and food stores, used profit making pricing formulas consistent with the food industry, and lacked plans to solicit donations.

Analysis of the Law

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable purposes. A substantial portion of your activities consists of operating a farmer's market in a commercial manner, which provides more than an incidental benefit to the participating vendors.

You are not operated exclusively for an exempt purpose as described in Section 1.501(c)(3)-1(c)(1) of the regulations. Although the market includes some benefits for low-income individuals and occasional educational events, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for local farmers and for-profit vendors.

By providing a venue for local farmers and vendors, the majority of whom are for-profit enterprises, to sell their products, you are operating for the private interests of these businesses rather than a public interest as described in Section 1.501(c)(3)-1(d)(1)(ii).

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the market and the operation of the food donation as well as any educational programs are two distinct purposes. Since the operation of the market is the main part of your activities and is not a recognized charitable or educational purpose, you are not organized and operated exclusively for charitable purposes. The market operation is no different from that of other for-profit markets or retailers. Therefore, you are in competition with for-profit businesses. Furthermore, you serve the private benefit of your vendors by giving them the opportunity to sell their products at your market.

You are not similar to the organization described in Rev. Rul. 76-94 because the operation of the farmer's market is your main function. Your planned educational and charitable programs are secondary to your total activities and are added programs, as a way to attract customers to the market. As you indicated, the area you serve is not economically distressed, and the market serves as a community gathering place where area residents can buy fresh, locally grown food products directly from farmers. Therefore, any charitable and educational programs are secondary and incidental to your overall activities.

Similar to the cooperative art gallery described in Rev. Rul. 71-395 you provide a venue for selling items that advance for-profit interests. As explained in this Revenue Ruling an

organization that operates for the purpose of exhibiting and promoting the sales of for-profit vendors does not qualify for exemption under section 501(c)(3).

You are similar to the organizations described in the American Institute for Economic Research v. United States, supra, and Living Faith, Inc. v. Commissioner, supra. You plan to operate a market in competition with other for-profit markets. Your market is viewed as commercial. Your sources of revenues are mainly from stall rentals to your vendors and your expenses are mainly for the market's operation. Taken in totality, your market is a significant non-exempt commercial activity that is not incidental to the achievement of an exclusively charitable or educational purpose.

As held in Better Business Bureau of Washington, supra, a single non-exempt purpose, if substantial, will preclude tax exemption under section 501(c)(3) of the Code. Your market operation, a substantial part of your activities, is a non-exempt purpose. Therefore, you are not operating exclusively for an exempt purpose as described in section 501(c)(3).

According to the findings in Nelson v. Commissioner, supra, you have the burden of proving that you satisfy the requirements of the particular exemption statute. Whether you meet this requirement is a statement of fact. The facts indicate that your primary activities are the operations of a farmer's market that is similar to any other for-profit market. Thus, you do not qualify under section 501(c)(3).

Applicant's Position

You represented that the market started out 3 years ago to create a community gathering place where area residents can buy fresh, locally-grown food products directly from farmers. From May through October, the market brings together the entire community at a festive weekly gathering. Neighbors exchange news and recipes while customers and growers build relationships. Another benefit is that market consumers find just-picked produce and learn how to prepare healthy meals with local foods.

Response to Applicant's Position

By providing a profitable outlet for local farmers and vendors you are primarily serving the private interests of the for-profit businesses who come to your market to sell their products. The gathering of local residents to purchase the products and exchange news and recipes is secondary to the commercial activities that occur at your market. Because you are operating for the commercial interests of for profit businesses you do not qualify as a charitable organization described under section 501(c)(3) of the Code.

Conclusion

Based on the facts and circumstances presented, you do not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code. Your activities are indistinguishable from similar activities of an ordinary commercial

enterprise. By providing vendors with an opportunity and venue to sell their products, you are operating for the private interests of the vendors. Accordingly, you must file federal tax returns, and contributions to you are not deductible under section 170 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 that 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". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed 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."

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. To be represented 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. 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 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 to you. 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 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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure, Publication 892