



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201451036**
Release Date: 12/19/2014
Date: September 25, 2014
UIL Code: 501.03-05
501.03-25

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.

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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,

Director, Exempt Organizations

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: 6/26/14

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B =
C =
F =
D =

UIL:

501.03-05
501.03-25

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 meet the qualifications for exemption under section 501(c)(3) of the Internal Revenue Code? No, for the reasons described below.

Facts:

You submitted your application for recognition of exemption from federal income tax under section 501(c)(3) of the Code and requested classification as a publicly supported organization described in sections 509(a)(1) or 509(a)(2).

You were founded in F (year) by B, C, their husbands, and a third couple to serve as an additional marketing opportunity for producers. Your goals are to:

- Provide marketing opportunities to local high quality vendors,
- Continue to build a reputation as a high quality market where vendors operate with the

Letter 4036 (CG) (11-2011)
Catalog Number 47630W

- highest level of integrity,
- Provide educational outreach to customers on achieving and sustaining a healthy lifestyle,
- Strengthen a consumer driven market, and
- Acquaint customers with small agricultural family businesses.

Your Articles of Incorporation filed in D (year) declare you are organized "exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under the section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code.

You further your purpose by promoting and operating an open-air farmers' market. Your vendors are small business entrepreneurs who sell products grown or made by them. The market is open to the public twice a week for approximately nine months a year. You advertise via flyers, internet sites (i.e. Facebook, Twitter, and business websites), radio/TV commercials, and newspaper/magazine ads.

You enable consumer education through direct marketing. On the first Saturday of each month, you conduct educational activities that inform consumers on the nutritional value of local food. These 1-3 hour programs are provided in conjunction with your market. You invite chefs, business owners and/or volunteers to present demonstrations designed to educate consumers.

You seek donations and grants to expand promotional and educational efforts. Extra funds from these sources are used to promote the market and attract more members. Seasonal special events showcase currently available market products. Expenses include administrative costs, signage, advertising, promotions, safety items, and lease payments for market locations. Approximately 50% of your expenses are paid towards board compensation, and about 25% is devoted to advertising. The rest of your expenses are allocated for operation of the market, such as rent, insurance, supplies, and professional fees.

Your market is a producer only market. The products sold by your vendors must be produced or grown by the vendor. You require your vendors to have a direct hand in the production of the items they sell. Vendors must sell their products or "value-added products" that are identified as products that enhance the individual vendors' main product. Vendors and their family or their employees may represent the vendor at the market. Vendors are expected to price products appropriate to high quality vegetables and other products that are expected of professional businesses.

Vendors who participate in your market are considered members. Membership is available to anyone who sells locally grown farm products or similar goods and operates within a prescribed radius of your market. Your organization expects to grow its membership each year. Members have no voting rights, but they are allowed to elect a representative who meets with your board of directors once a year.

The fee charged to each vendor/member is based on the amount of space and the number of markets attended (one or two times per week throughout your nine month operating season). Membership fees account for more than half of your revenue.

Applicants who want to come to the market 'just for fun' or to give products away are not encouraged to do so at your farmers' market. If your vendors wish to give products away, you recommend that they donate to their products to charitable organizations on their own, not at the market.

Some examples you provided in your description of educational activities include:

- Cooking with seasonal produce/meat/eggs/cheese;
- Preserving foods;
- Cooking classes;
- Gardening, wood-working, basket making, pumpkin carving/decorating, jewelry-making, and/or painting workshops;
- Agricultural heritage;
- Health-related screenings.

Law:

Section 501(c)(3) of the Code provides for the exemption of organizations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It cannot operate for the benefit of specific individuals, including those who created it.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides the term "charitable" is used in section 501(c)3 in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such terms include:

- 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; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or
- (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Rev. Rul. 67-72, 1967-1 C.B. 125 held an organization created by representatives of both labor and management to select individuals for apprentice training, arrange their classroom and on-the-job training, and provide books and supplies used in the training, is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

Rev. Rul. 68-307, 1968-1 C.B. 258 found a nonprofit organization formed to help the National Park Service improve and expand its educational and scientific programs is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. The organization assists in developing the park library and museum, in preserving historic objects, and, generally, in furthering the educational and scientific aims of the Park Service.

Rev. Rul. 69-175, 1969-1 C.B. 149, describes an organization created to provide bus transportation for school children to a tax-exempt private school. The organization was formed by the parents of pupils attending the school. The organization provided transportation to and from the school for those children whose parents belonged to the organization. Parents were required to pay an initial family fee and an additional annual charge for each child. The organization's income approximately equaled the expenses involved in its operations. The Internal Revenue Service determined that "[w]hen a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest."

Rev. Rul. 70-186, 1970-1 C.B. 128 held an organization formed to preserve a lake used as a public recreation facility by treating the water in the lake and otherwise improving its condition for recreational purposes is a charitable organization exempt under IRC 501(c)(3).

Rev. Rul. 71-395, 1971-2 C.B. 223, holds that 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. The IRS concluded that the cooperative gallery served the private purposes of its members, even though the exhibition and sales of paintings were also educational in some respects.

Rev. Rul. 74-587, 1974-2 C.B. 162, held an organization that devoted its resources to programs to stimulate economic development in economically depressed, high-density, urban areas, inhabited mainly by low-income minority or other disadvantaged groups, qualified for exemption under IRC 501(c)(3).

Rev. Rul. 77-111, 1977-1 C.B. 144 found an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations is not operated exclusively for charitable purposes and does not qualify for exemption under section 501(c)(3) of the Code. Similarly, an organization whose purpose is to revive retail sales in an area of economic decline by constructing a shopping center does not qualify for exemption where the overall thrust is to promote business rather than to accomplish exclusively 501(c)(3) objectives.

Rev. Rul. 85-2, 1985-1 C.B. 178 held an organization that provides legal assistance to guardians ad litem who represent abused and neglected children before a juvenile court that requires their appointment lessens the burdens, of government and, therefore, qualifies for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court considered a collective organization created to dredge waterways. The majority of the funds for this activity came from owners of property adjacent to the waterways. The court found that the primary beneficiaries were the adjacent property owners. Any benefit to the general public because these dredged waterways would be a safe harbor for boats during a storm was secondary. Therefore, the organization was not exempt because of the significant private benefit provided.

Application of law:

Based on our analysis of the information you submitted during the application process and in light of the applicable law, we have determined that you do not operate exclusively for any of the purposes described in section 501(c)(3) of the Code.

An organization is not exempt from taxation merely because its operations are not conducted to produce a profit. The organization must operate exclusively for one or more of the purposes described in section 501(c)(3) of the Code and the applicable regulations.

Section 1-501(c)(3)-1(c)(1)(ii) of the regulations requires an organization to show that it is not organized or operated for private interests in order to be exempt under section 501(c)(3) of the Code. When a group of individuals associate to provide a service for their own benefit, they are serving a private interest. Your primary activities are directed toward providing a location for your members to sell goods and promote their sales activity. Your primary source of funding is member payments for the use of your facilities. The members are expected to profit from your operation. You do not accept member/vendors who do not expect to profit from renting space at your market. These facts demonstrate that you provide a substantial private benefit to your members. See Rev. Rul. 69-175; Rev. Rul. 71-395; Ginsburg v. Commissioner.

You operate the farmers' market for the benefit of your members two times per week, but your educational activities are conducted only one Saturday per month. Like Better Business Bureau of Washington D.C., Inc. v. United States, your activities promote a substantially nonexempt purpose and are not entitled tax-exempt status.

Your Position

You believe your marketing activities:

1. Lessen the burdens of government because small farms have a lower environmental impact than industrial farms,
2. Promote a sense of community which boost the local economies, labor markets and tax revenues, and
3. Provide instruction to individuals.

To support your position you cited Revenue Rulings 68-307, 67-72, and 70-186.

Service Response to Your Position

1. You have not shown that a governmental unit considers any of your activities to be its burden or that you actually lessen such governmental burden. See Rev. Rul. 85-2, 1985-1 C.B. 178.
2. Boosting the local economies and labor markets may be recognized as a 501(c)(3) purpose. But, you have not indicated you operate in an economic economically depressed area. See Rev. Rul. 74-587, 1974-2 C.B. 162. And, even if you operated in a depressed area, your overall thrust is to promote business rather than to accomplish exclusively 501(c)(3) objectives. Rev. Rul. 77-111, 1977-1 C.B. 144.
3. Your activities are not restricted to educational and scientific programs. In fact, you were formed for the primary purpose of providing marketing opportunities to local vendors which include your founder/directors. See Rev. Rul. 67-72, 1967-1 C.B. 125 and Rev. Rul. 68-307, 1968-1 C.B. 258.
4. Finally, while your market may provide benefit to the public, the private benefits derived by your for profit vendors through increased sales is a substantial nonexempt purpose. See Rev. Rul. 70-186, 1970-1 C.B. 128 and Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945).

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes as required by section 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

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, How to Appeal an IRS Decision on Tax Exempt Status.

Types of information that should be included in your appeal can be found on page 1 of Publication 892, under the heading "Filing a Protest." 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, 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Letter 4036 (CG) (11-2011)
Catalog Number 47630W

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Sincerely,

Director, Exempt Organizations

Enclosure: Publication 892

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