



Department of the
Treasury Internal
Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Number: **201510058**
Release Date: 3/6/2015

Date: December 11, 2014

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00; 501.33-00; 501.36-00;
501.36-01

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

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

Sincerely,

Director, Exempt Organizations

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 16, 2014

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

P = state
Q = city
R = affiliate
t = dollar amount
u = dollar amount
v = dollar amount
x = date

UIL:

501.03-00
501.33-00
501.36-00
501.36-01

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 tax exemption under section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the organizational test under section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.

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

Facts

You were incorporated on date x in the state of P. Your Articles of Incorporation indicate you are a not for profit and that you are a public benefit corporation. Your Articles state upon dissolution "all assets will be donated to another non profit agency with similar mission."

Your Constitution states that your purpose "is to provide a service to the community and to local farmers/producers by:

1. Providing a local, producer's-only market for direct sales to the public
2. Offering the consumer a source of high-quality, locally grown, nutritional products
3. Promoting the development of a sustainable local farm-economy
4. Educating the consumer on the production, preparation and growing practices of healthy food."

Your mission is "to provide regional, small-family farmers with an opportunity to sell directly to consumers, thereby supporting local farmers, offering consumers high quality products, and educating the community about the production, preparation and growing practices of food that is both nutritional and healthy."

You are a membership-based organization composed of family-managed, small-scale, independent farms gathered together to participate in retail and educational activities. You provide your members a marketplace for direct sales to the public and education to your consumers on the production, preparation and growing practices of healthy food. You provide a direct connection between local shoppers and the small-scale farms and food producers that the market champions.

You began as a group of local farmers joining together to sell their products. There was neither formal organization, nor leadership until the following year. Farmers participated at will, with no membership requirements or obligations. Through the acquirement of a three-year grant you began to develop as a formal organization with a mission statement, goals and objectives. You were also able to hire an independent contractor to serve as market manager and more fully manage the operation.

Since your beginning, you have engaged in weekly markets where member vendors sell their products to the community at large. You have promoted the market through the dissemination of emailed weekly newsletters, building and hosting a website, recruiting new members, and building a presence in the local farming/farmers' market community.

You are managed through your board of directors and hired market manager. The board meets on a monthly basis to expand membership, increase market visibility, and conduct strategic planning. Members who are selected to join pay a yearly membership of t dollars and pay a vendor's fee at each market of u dollars between the months of December and March, and v dollars between the months of April and November. Vendor fees constitute stall rental fees or market space rental fees. Membership and vendor fees are set to increase.

Your market is open every Wednesday, year round, between the hours of 4:00 and 6:00 PM. Winter hours are from 4:00 to 5:00 PM. Any person residing within a 75-mile radius of Q who is engaged in the growing of farm products and agrees to abide by your rules and regulations may become a member/vendor. Vendors who sell items that are not produced on a farm are also allowed to become members, although such vendors will comprise no more than 20% of the total market vendor population.

Your vendor application requests information about each vendor including the business name, name of owner(s), address, and a list of products to be sold. Items allowed for sale may include raw, uncut fruits and vegetables, berries, edible plants and flowers, herbs, nursery stock, bedding plants/seedlings, fresh flowers, nuts, garlic, grains, shelled peas and beans, frozen meats and poultry, eggs, mushrooms, honey and molasses. Value-added and prepared foods must be from a certified/licensed kitchen, and may include bread, coffee, beeswax candles, cheese, cured sausage, meats, and crafts.

Vendors must identify themselves at your market with an easily-read sign listing the name and address of the vendor, as well as the name of the farm where appropriate. Certifications such as "Certified Organic" (or others) are encouraged to be displayed.

Your primary source of funding is membership and vendor fees. Outside funding has been secured through a single grant and it has provided supplemental income to fund the market manager position, development of a market brand, website and long term strategic planning. This grant is not ongoing and will not be renewed past its expiration. Your future funding will continue to depend on membership and vendor fees. Your other expenses consist of insurance, marketing and advertising, supplies, and professional fees.

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, educational, or other enumerated purposes, and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization 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 test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

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(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(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 provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 61-170, 1961-2 C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Revenue Ruling 67-216, 1967-2 C.B. 180, established that a nonprofit organization formed and operated exclusively to instruct the public on agricultural matters by conducting annual public fairs and exhibitions of livestock, poultry, and farm products may be exempt from tax under section 501(c)(3) of the Code.

Revenue Ruling 68-167, 1968-1 C.B. 255, held that a nonprofit organization created to market the cooking and needlework of needy women may be exempt from tax under section 501(c)(3) of the Code. The organization operated a market where it sold the cooking and needlework of these women who were not otherwise able to support themselves and their families. The organization provided a necessary service for needy women by giving them a market for their products and a source of income.

Revenue Ruling 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 Service

determined that "when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest."

In Revenue Ruling 71-395, 1971-2 C.B. 228, a cooperative art gallery was formed and operated by a group of artists for the purpose of exhibiting and selling their works and did not qualify for exemption under section 501(c)(3) of the Code. It served the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

In Revenue Ruling 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 the hard-core unemployed did not qualify for exemption. The organization's purpose of providing job training for the hardcore 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 was not. The ruling concluded that the operation of the store and the operation of the training program were two distinct purposes. Since the former purpose was not a recognized charitable purpose, the organization was not organized and operated exclusively for charitable purposes.

Revenue Ruling 80-287, 1980-2 C.B. 185, involved a nonprofit lawyer referral service that arranged, at the request of any member of the public, an initial half-hour appointment for a nominal charge with a lawyer whose name was on an approved list maintained by the organization. As a general rule, providing services of an ordinary commercial nature in a community, even though the undertaking is conducted on a nonprofit basis, is not regarded as conferring a charitable benefit on the community unless the service directly accomplishes one of the established categories of charitable purposes. The organization's activities were directed toward assisting individuals in obtaining preventive or remedial legal services and, as such, were not specifically designed to confer a charitable benefit on the community. Although the lawyer referral service provided some public benefit, a substantial purpose of the program was promotion of the legal profession.

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. The Petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

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 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.

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 did not qualify under section 501(c)(3) of the Code. The court found substantial evidence to support a conclusion that the organization's activities furthered a substantial nonexempt purpose, including that the operations were presumptively commercial. The organization competed with restaurants and food stores, used profit-making pricing formulas consistent with the food industry, and incurred significant advertising costs.

Application of Law

Section 501(c)(3) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Your Articles of Incorporation indicate your corporation is not for profit and that you are a public benefit corporation. Accordingly, your Articles do not include a purpose clause that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in section 501(c)(3) of the Code.

Your Articles state that upon dissolution "all assets will be donated to another non profit agency with similar mission." This broad statement does not ensure that your assets will be dedicated to exempt purposes as specified in section 501(c)(3) of the Code upon dissolution.

You do not have a valid purpose clause nor a valid dissolution clause. Accordingly, you do not satisfy the organizational test and you are not organized for exempt purposes.

You are also not described in section 501(c)(3) of the Code nor section 1.501(c)(3)-1(a)(1) of the regulations because you fail the operational test. Specifically the facts show you are not operated exclusively for section 501(c)(3) purposes but for the purpose of facilitating sales for the benefit of producers at your farmers' market.

You are not operated exclusively for an exempt purpose as described in section 1.501(c)(3)-1(c)(1) of the regulations. Specifically the facts show you engage in a substantial non-exempt activity similar to a commercial enterprise and marketing service by operating an open market for farmers. You are operated for the substantial purpose of private benefit to vendors of products at your market. Although the market includes 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.

You provide a venue for local farmers and vendors to promote the businesses they own and to sell their products directly to consumers. 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) of the regulations. Vendors identify themselves at your market with a sign listing their name and address, as well as the name of the farm where appropriate. You provide connections for producers and consumers to facilitate future sales.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provide, in part, that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Any consumer education you provide is incidental to the sale of members' products and promotion of their businesses.

You are similar to the organization described in Rev. Rul. 61-170. In your case, substantially all of your resources, purposes, and activities are used to arrange a commercial market for vendors. You first began as a group of farmers joining together to sell their products. While the public does benefit from an increase in market selection, the overall purpose of your organization is to serve and benefit your members and vendors selling at the market and not the general public.

You are not like the organization in Rev. Rul. 67-216 because your principal purpose is to facilitate produce sales and pair buyers with sellers. You devote a majority of your resources and time to this purpose. You utilize resources to help members gain visibility to potential buyers through the vehicle of your market. You engage in marketing efforts focused on buyers in the effort to encourage them to support members at your market.

You are not like the organization in Rev. Rul. 68-167 because you have not established that your members selling their products to the public are needy individuals who are not otherwise able to support themselves and their families. Neither are the sales conducted in furtherance of any program to provide markets for needy individuals who are not otherwise able to support themselves.

You are like the organization described in Rev. Rul. 69-175 because you were formed by a group of farmers joining together to sell their products. New members must pay a membership fee when they join you, and they must pay additional vendor fees each day they participate in the market. By associating together and providing a cooperative service amongst themselves, your members are serving a private rather than a public interest. As previously stated, section 1.501(c)(3)-1(d)(1)(ii) of the regulations requires an organization to serve a public rather than a private interest in order to qualify under section 501(c)(3) of the Code.

Similar to the cooperative art gallery described in Rev. Rul. 71-395, you provide a venue for selling items that advance private interests. As explained in this ruling, an organization that operates for the purpose of exhibiting and promoting the sales of products for the benefit of private individuals does not qualify for exemption under section 501(c)(3) of the Code. Similar to the organization described in the ruling, you are not operated exclusively for educational

purposes. Even though providing information on healthy foods may be educational in other respects, it is not your primary purpose.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the farmers' market and the provision of education on healthy foods are two distinct purposes. Because the operation of your market is not a recognized charitable or educational purpose, you are not operated exclusively for exempt purposes.

You are similar to the organization described in Rev. Rul. 80-287. Your activities are directly promoting and facilitating the sale of products. The products are selected by vendors for the purpose of increasing sales. You provide a market for these products and expand sales opportunities.

As held in Better Business Bureau of Washington, D.C., Inc. v. United States, a single non-exempt purpose, if substantial, will preclude tax exemption under section 501(c)(3) of the Code. The operation of your farmers' market, a substantial part of your activities, is a non-exempt purpose.

You are similar to the organizations described in the American Institute for Economic Research v. United States and Living Faith, Inc. v. Commissioner. You are operating a farmers' market in competition with other commercial markets. Your sale of products such as fruits and vegetables, flowers, and meats is indicative of a business. Your sources of revenues are mainly from member fees and your expenses are mainly for insurance, marketing, and advertising. Your market is a significant non-exempt commercial activity that is not incidental to the achievement of other educational purposes.

You are similar to the organization described in Ginsberg v. Commissioner. Your members are a collective of family-managed, small-scale, independent farms. The primary beneficiaries of the activities of your market are your members who are selling their products. Any benefit the consumers of the goods receive through education on the food's production, preparation, and growing practices is secondary to the sale of goods.

Applicant's Position

You state your market has been a blessing to area residents and to your local farmers. You indicate the main street area of Q is in transition from a slum to a revival community within your inner city. Ten years ago, the area was known for its bars, drugs, and abandoned buildings. Now you are seeing people moving back into the area along with new businesses. There are still no food suppliers within walking distance of the market.

You are a voluntary organization providing an organized outlet for small local farmers to market fresh grown produce, to get help in running their farms, and to educate the community about healthy eating. You provide a website, advertising, and education events for your members and community. The farmers must meet strict guidelines to be able to sell at your market. Many farmers are growing heirloom variety produce that cannot be found in regular supermarkets.

The best perk of the market is the opportunity to meet the growers, learn about the different

varieties of food, and how best to prepare them.

You sent us printouts of your website which restate your mission statement and describe some of your upcoming community events. You are networking with another non-profit farmers' market, R, as mentioned on your website.

Service Response to Applicant's Position

By providing a profitable outlet for local farmers and vendors you are primarily serving the private interests of the businesses and individuals who come to your market to sell their products. You indicated that the area you serve used to be a depressed area and is now in transition, but you provided no evidence to support this claim. You indicated that you are networking with another nonprofit organization, R, but you provided no evidence that this organization is tax-exempt under any subsection. The facts show the gathering of local residents for educational purposes is secondary to the commercial activities that occur at your market.

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.

You are not organized or operated exclusively for exempt purposes as set forth in section 501(c)(3) of the Code. You do not meet the organizational test for exemption because your Articles of Incorporation do not contain the necessary purpose and dissolution clauses required to meet the organizational test for exemption under section 501(c)(3) of the Code.

Your activities are indistinguishable from the similar activities of an ordinary commercial enterprise. You are furthering the substantial non-exempt purpose of pairing producers with buyers of products. By providing members with an opportunity and venue to sell their products, you are operated for the substantial purpose of private benefit to members at your market. Therefore, we conclude based on these facts that you do not meet the operational test for exemption under section 501(c)(3) of the Code.

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 why you disagree. Your protest statement must be filed within 30 days of the date of this letter and should include:

- Your organization's name, address, EIN number and a daytime phone number.
- A statement that the organization wants to protest the proposed determination.
- A copy of this letter showing the findings that you disagree with (or the date and IRS office symbols from the letter).
- An explanation of your reasons for disagreeing including any supporting

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documents.

- The law or authority if any, on which you are relying.

The protest statement may be signed by one of your officers or your representative. 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*.

The protest statement should also include the following declaration.

"Under penalties of perjury, I declare that I have examined this protest including accompanying documents and, to the best of my knowledge and belief, the statement contains all relevant facts, and such facts 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 protest will be considered incomplete without this statement.

If an organization's representative signs and submits the protest, a substitute declaration must be included stating that the representative prepared the protest and any accompanying documents; and whether the representative personally knows (or does not know) that the statement of facts in the protest and any accompanying documents are true, correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. In that case you must file a 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 seek a declaratory judgment in court at a later date because the court requires that you first exhaust administrative remedies at the IRS. 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.

Sincerely,

Director, Exempt Organizations

Enclosure: Publication 892