



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

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Release Date: 12/31/2015
UIL Code: 501.03-00
501.33-00
501.36-00
501.36-01

Date: October 7, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

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.

Sincerely,

Director, Exempt Organizations

Enclosure:

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
P.O. Box 2508
Cincinnati, OH 45201

Date: June 16, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

P = State
R = Date

UIL:

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

Dear _____ :

We considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

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

Facts

You were incorporated on date R in the State of P.

Your purposes include, without limitation:

1. Strengthening the natural products economy by developing model processes, practices, and procedures to contribute to the sustainability and development of markets that make fresh and healthy foods available to all people;
2. Contributing to healthy and sustainable lifestyles for all by promoting products and programs from regional farmers, businesses, and artisans;

3. Pursuing programs and partnerships that have environmental, social, and economic integrity;
4. Supporting the efforts of other charitable organizations by making the market space available for their promotion and outreach.

Your organization provides the surrounding community with a marketplace where farmers, businesses, and artisans sell their goods directly to the public one day per week. You also provide:

- Special events where local craft vendors can sell their products;
- Cooking demonstrations and other educational programs for adults and monthly educational events for children one day per month.
- Space at the market for local non-profits to promote their activities.

You are managed through your board of directors and a contracted market manager. The board meets on a monthly basis to discuss the weekly markets and how to improve them, the various community and children's projects, and marketing strategies.

Since your beginning, you have engaged in a market where farmers and other vendors sell their products to the community at large. The "other vendors" are allowed to sell prepared food products such as soups, bread, coffee, etc. at minimal overhead and marketing expenses. At least two of your directors and officers sell products as vendors at your market.

Your market is open every Saturday from March to December. Vendors are selected by the board of directors after submitting an application detailing their growing, meat processing, or baking practices. Food vendors are charged small fees that do not exceed \$25 per week. You have promoted the market through the dissemination of weekly newsletters, building and hosting a website, and building a presence in the local farmers' market community.

Your organization is funded by community donations and vendor fees. Your expenses consist of insurance, marketing, supplies, professional fees, and expenses related to special events.

Law

Section 501(c)(3) of the Internal Revenue Code (Code) exempts from federal income tax: corporations, and any community chest, fund, or foundation, 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 (but only if no part of its activities involve the provision of athletic facilities or equipment), 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(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(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.

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 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

You are 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 vendors 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. The facts show you engage in a substantial non-exempt activity similar to a commercial enterprise by operating an open market for farmers and other vendors, which includes members of your governing body.

Contrary to section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you are operated for the substantial purpose of providing private benefit to vendors of products at your market. Although the market includes educational events, more than an insubstantial part of your activities are in furtherance of the non-exempt purpose of being a profitable outlet for your vendors. This is evident by the fact that you state "these businesses are given the opportunity to sell their products with minimal overhead and marketing expenses." You not only provide the outlet for them to sell their products, you provide marketing and cover overhead expenses that the vendors would otherwise have to expend. Because your governing body members are also vendors, this private benefit constitutes inurement.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, 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 the vendors' products.

You are similar to the organization described in Rev. Rul. 61-170. In your case, your primary purpose is to provide a commercial market for vendors. While the public may benefit from an increase in market selection and the educational programs that you provide, the overall purpose of your organization is to serve and benefit the vendors selling at the market and not the general public.

You are not like the organization in Rev. Rul. 67-216 because you do not operated exclusively to instruct the public. Instead, you utilize resources to help vendors gain visibility to potential buyers through the vehicle of your market.

Unlike the organization described in Rev. Rul. 68-167 you do not serve needy individuals who are not otherwise able to support themselves and their families.

Your activities are, in effect, identical to those of the cooperative art gallery described in Rev. Rul. 71-395. You operate for the purpose of providing space to local farmers and vendors to exhibit and sell their products. 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.

You are similar to the organization described in Rev. Rul. 73-127 because the operation of the farmers' market and your provision for educational programs are two distinct purposes. Because the operation of a market is not a recognized charitable or educational purpose, you are not operated exclusively 501(c)(3) purposes.

Like the organization described in Rev. Rul. 80-287, your activities directly promote and facilitate the sale of products of by for-profit vendors.

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 market in competition with other commercial markets. Your sale of products such as fruits, vegetables, meats, soups, breads, and coffee is indicative of a business. Your sources of revenues are mainly from vendor fees and your expenses are mainly for marketing, supplies, and professional fees. Your market is a significant non-exempt commercial activity that is not incidental to the achievement of other educational purposes.

Your position

You state that your market provides access to fresh and healthy foods to all people and contributes to healthy and sustainable lifestyles for all people by promoting products and programs from regional farmers, businesses, and artisans. You will:

- Provide a central location for small local farmers to sell their produce and meat when they would otherwise be unable to do so,
- Assist in growing the area's ability to provide food for the community,
- Help producers to sell products at a profit so they can purchase equipment to increase their cultivation and efficiency practices, and
- Allows small vendors to sell certain food products with minimal overhead and marketing expenses.

Our response to your 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. The facts show the gathering of local residents for educational purposes is secondary to the commercial activities that occur at your market.

Conclusion

You do not qualify for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Code because you do not meet the operational test. Your activities are indistinguishable from the similar activities of an ordinary commercial enterprise, and these activities provide substantial private benefits to your vendors. Since members of your governing body are vendors, this private benefit also

constitutes inurement. Therefore, we conclude 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.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, 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.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, 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.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. 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*.

In the event your protest is reviewed and overturned by the Office of Appeals, we have concluded that you would qualify for the foundation classification currently documented in the administrative record.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

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

Street address for delivery service:

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

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Tamera Ripperda
Director, Exempt Organizations

Enclosure:
Publication 892