



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **201604018**  
Release Date: 1/22/2016

Date: October 27, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.32-00; 501.03-30

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,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

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**

P.O. Box 2508  
Cincinnati, OH 45201

**Date:** August 19, 2015

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = State

C = City

D = County Lands

F = Indian Tribe

T = Month/year -Month/Year

V = Month/year-Month/Year

W = Year

X = Year

Y = Year

Z = Year

**UIL:**

501.32-00; 501.03-30

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 organizational test under section 501(c)(3) of the Code? No, for the reasons stated below.

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

## **Facts**

You were incorporated in the state of B and you previously received exemption under section 501(c)(4) of the Code.

Your Restated Articles of Incorporation from X state that you are “organized exclusively for charitable, religious, educational, scientific, or religious purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.” The document also states your specific purpose as:

The specific purpose shall be to promote and enhance the interest in automobile racing, good fellowship and sportsmanship among all members of the club, conduct functions and activities in a manner benefitting members of the automotive sport, and to encourage a better understanding of automobile racing as a sport among members of the public, press, and law enforcement agencies.

A later amendment to your Articles of Incorporation in Y and Article II, Section 2.01, of your bylaws state that you are organized, “exclusively for charitable, religious, educational and scientific purposes under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code by holding stock car race activities.” Neither your Restated Articles of Incorporation nor the amendment to your Articles of Incorporation contain a dissolution clause.

You hold stock car races. You had 10 race activities planned for Y. In previous years you held race activities each Friday from May through September. The races are held at D in C, B. Participating race drivers are paid after each event.

Your funding is received from gate receipts from the public, sponsors, signs advertising businesses, the city of C and the F. For Z, your sources of revenue included gate receipts, sponsors, points revenue, sanction fee revenue, banquet, gross profit from sale of inventories, and miscellaneous. Just over 74% of the revenue was from gate receipts. Your expenses include payroll taxes, equipment rental/maintenance, supplies, telephone, race driver winnings, advertising and promotion, sanction fees, insurance, banquet expenses, and office supplies. Your largest expense is race driver winnings. From W-Z the race driver winnings averaged 68%-73% of your expenses per year. Each year you make donations of funds or goods to 501(c)(3) organizations in the community. For instance, you collect canned goods at your events and donate them to a food pantry. You also provide scholarships to individuals in the name of deceased individuals who volunteered their time to the operation of the race track. Drivers, pit crew members, relatives, friends, and family members are eligible to apply. Under your expenses, your gifts, grants, and similar amounts paid out expense was less than 0.01% of your expenses for the years T and V. No expenses were listed in this category for the remaining years.

## **Law**

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable, educational, scientific, or religious purposes, provided no part of the 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 under section 501(c)(3) of the Code, an organization must be both organized and

operated exclusively for one or more 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 limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, if upon dissolution, such assets would by reason of a provision in the organization's articles of organization or by operation of law, be distributed for one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization operates exclusively for exempt purposes if it engages primarily in activities that accomplish 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 states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term charitable includes relief of the poor and distressed or of the underprivileged and the advancement of education or science.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations defines the term educational as the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Rev. Rul. 67-149, 1967-1 C.B. 133, described an organization that was formed for the purpose of providing financial assistance to several different types of organizations which were exempt from federal income tax under section 501(c)(3). It carried on no operations other than to receive contributions and incidental investment income and to make distributions of income to such exempt organizations at periodic intervals. The organization did not accumulate its investment income. This particular organization qualified for exemption under section 501(c)(3) of the Code.

Rev. Rul. 77-365, 1977-2 C.B. 192, states that an organization that conducts clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport is operated exclusively for educational purposes and 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 of the United States interpreted the requirement in section 501(c)(3) that an organization be "operated exclusively" by indicating that an organization must be devoted to exempt purposes exclusively. This plainly means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

## **Application of law**

You are not described under section 501(c)(3) of the Code or section 1.501(c)(3)-1(a)(1) of the regulations because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under section 501(c)(3) of the Code.

### **Organizational Test**

You do not meet the organizational test to qualify for recognition of tax exempt status under section 501(c)(3) of the Code. Your Articles of Incorporation do not limit your purposes to one or more exempt purposes as required in section 1.501(c)(3)-1(b)(1)(i) of the regulations. Stock car race activities are not an exempt purpose. Moreover, you fail the organizational test because your Articles of Incorporation do not dedicate your assets to an exempt purpose under section 501(c)(3) of the Code as required in section 1.501(c)(3)-1(b)(4) of the regulations.

### **Operational Test**

In addition to not meeting the requirements of the organizational test, you also do not satisfy the operational test requirement to be recognized as exempt under section 501(c)(3) of the Code. To satisfy the operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. 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. See section 1.501(c)(3)-1(c)(1) of the regulations. Your primary activity is holding public stock car racing events from which you receive a large part of your total revenue. You are engaged in a business with the public for recreational and social purposes and you are not organized and operated exclusively for charitable purposes under section 1.501(c)(3)-1(d)(2) of the regulations or educational purposes under section 1.501(c)(3)-1(d)(3)(i) of the regulations. Additionally, because you serve a private rather than a public interest by using the majority of your revenue for race car driver winnings, you do not operate exclusively for one or more exempt purposes (section 1.501(c)(3)-1(d)(1)(ii) of the regulations).

You are not like the organization in Rev. Rul. 67-149 because your support to other charitable organizations is incidental to your primary purpose of conducting stock car races. Unlike the organization in the ruling that simply collected contributions and donated them to various charities, the facts show that your reason for forming was to conduct stock car races, not to collect donations for other charities.

You are unlike the organization in Rev. Rul. 77-365. You conduct stock car races for several months out of the year. Individuals pay fees to watch the races. There is no educational component to your activities. Your activities are social and recreational.

Although you do conduct some charitable activities such as providing scholarships to individuals and providing donations of financial assistance and food items to 501(c)(3) organizations, these activities are incidental to your overall purpose of conducting stock car racing events for the public. As illustrated in Better Business Bureau, a single substantial non-exempt purpose is sufficient to prevent exemption. Your main purpose of conducting stock car racing events prevents exemption under section 501(c)(3) of the Code.

### **Your position**

You state that you do qualify for exemption under section 501(c)(3) of the Code because you qualify under Part X line 5g (public charity status 509(a)(1) and 170(b)(1)(A)(vi)). You state that you receive a substantial part of

your financial support in the form of contributions from publicly supported organizations, from a governmental unit and from the general public. You state that a substantial part of your support comes from the F, a governmental unit, and the weekly general public contributions which you depend on from May to October.

You state that race winners and race operation expenses are paid because these are organization expenses and it is not different than any other organization conducting such operations. You indicate that the only difference is that you have a small profit, although some nights you have no profit. You make donations numerous times during the race season to a food pantry and you have given out scholarships several years in a row in memory of individuals who were involved in your organization.

### **Our response to your position**

The fact that you receive public support does not make you exempt under section 501(c)(3) of the Code. To receive exemption under section 501(c)(3) of the Code you must meet the operational test by showing that you are operated exclusively for charitable, religious, educational, scientific, or religious purposes. You hold stock car races and a substantial part of your funds go to race winnings. Stock car racing is not educational or charitable. You may give donations to other 501(c)(3) organizations which is charitable, but that is incidental to your main purpose of racing and only an insubstantial amount of funds or goods are donated.

To receive exemption under section 501(c)(3) of the Code you must also meet the organizational test. The purpose clause in your amended Articles of Incorporation indicates you were formed for 501(c)(3) purposes by holding stock car race activities. Stock car racing is not a 501(c)(3) purpose. Additionally, your organizing documents lack a dissolution clause. Therefore, you do not meet the organizational test.

Part X line 5g of Form 1023 indicates the public charity status you are granted if you meet the organizational tests and operational tests under 501(c)(3). Since you do not meet the organizational or operational tests, the fact that you receive funds from the public is irrelevant.

### **Conclusion**

You are not organized and operated exclusively for exempt purposes under section 501(c)(3) of the Code. You do not meet the organizational test because your organizing document does not properly limit your purposes to those described in section 501(c)(3) of the Code and your assets are not dedicated to one or more exempt purposes within the meaning of section 501(c)(3) of the Code. Likewise, you do not meet the operational test because you conduct more than an insubstantial amount of social and recreational activities.

Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170 of the Code. Your exemption under section 501(c)(4) of the Code remains in effect.

### **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*.

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](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892