



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

Release Number: **201615018**  
Release Date: 4/8/2016  
UIL Code: 501.03-05

Date: January 15, 2016

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,

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:  
November 23, 2015  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = State  
C = County  
D = Date

**UIL:**

501.00-00  
501.03-00  
501.03-05

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 qualify for exemption under section 501(c)(3) of the Code? No, for the reasons shown below.

**Facts**

You are a B corporation formed on D. You did not include Articles of Incorporation with your Form 1023 application, and incorrectly stated on Form 1023, Part II that you are an unincorporated association. Your bylaws provide that you are organized for the charitable and educational purposes of providing a courier service to qualified patients. Your bylaws state that you have one class of members, and membership may be granted to any individual or corporation that supports the mission and purposes of the organization, and pays the annual dues as set by the board of directors. You stated that your board shall consist of not less than three (3) directors, and each director shall hold office for a term of three (3) years. Directors will elect their successors, as members have no voting rights.

Your Collective Membership Agreement, states that your mission is to provide a way for your members to collectively and cooperatively cultivate and distribute medical marijuana for medical purposes to qualified patients and primary caregivers who come together to collectively and cooperatively cultivate physician-recommended marijuana. You stated that your methods of operation and business form fall under the

guidelines of the B State Attorney General. You also indicated that you provide and deliver medical marijuana (in state regulated doses from qualified cultivators) to doctor-qualified patients in C County that provide proper B identification and a B doctor's recommendation to receive marijuana allowing you to attend to their medical needs.

You attached your Business Plan with your Form 1023 application. This Business Plan is composed of seven (7) sections:

1. Executive Summary
2. Organization Summary
3. Services
4. Market Analysis Summary
5. Strategy and Implementation Summary
6. Management Summary / Personnel Plan, and
7. Financial Plan

Your Executive Summary indicates that you work to enhance the lives of qualified patients stricken with maladies alternatively relieved by the administering of pharmaceutical grade THC (tetrahydrocannabinol) – Cannabis medications. You will deliver the prescribed THC-Cannabis medications to qualified patients, provide information about the medications, and help patients understand the instructions provided by their doctors or other health practitioners. You project to serve fifty (50) to one-hundred (100) patients per week in the first year, and project to increase this number to two-hundred (200) patients per week in year two. You intend to apply any surplus cash flow to community awareness, legislative activities, marketing activities, or a contingency fund.

Your Organization Summary states that you are a B nonprofit corporation. You are focused on improving and enhancing the medical cannabis climate in the State of B by promoting the benefits of medical cannabis to the general public, protecting the rights of medicinal cannabis patients, and caregivers, and assisting patients to improve their overall well-being.

You listed three (3) primary services in Section 3 of your Business Plan. You will cultivate off-site, medical cannabis or acquire said medication from collective members, you will deliver medicinal cannabis to qualified patients, and you will help qualified patients understand the instructions that their doctors or other health care practitioners will provide. You will also develop an organization brochure to explain the benefits of membership to prospective members.

Your Market Analysis Summary detailed the various types of businesses involved with medical cannabis. You also enclosed a comparative analysis of drinkers and smokers, as compared to marijuana users.

Your Strategy and Implementation Summary detailed your main strategic goal of growing your membership. Your efforts to increase your membership include twice-annual visits to all patients within the city and telephone calls to potential members within the city by your executive director. Additionally, you will conduct advertising and promotional activities, question and answer sessions, legislative and governmental agency education, and mutual legal aid and support.

Your Management Summary and Personnel Plan detailed the collaboration with your board of directors and executive director, as well as your employment of a professional lobbyist to keep you apprised of legislative activities and affect desired outcomes.

Your Financial Plan indicates you will fund growth solely through cash flow, rather than through borrowing or assessment of members. Projected profits may be applied to legislative activities, marketing activities, or various contingencies.

## **Law**

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational 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 (“the Regulations”) provides that, in order to be exempt an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. 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)(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 it is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities are 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 exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, the organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals or shareholders of the organization.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term “charitable” is used in section 501(c)(3) of the Code in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See *Restatement (Second) of Trusts*, sections 368, 372 (1959); 4A Scott and Fratcher, *The Law of Trusts*, sections 368, 372 (4<sup>th</sup> ed. 1989). However, a trust is invalid if its purpose is illegal. *Restatement (Second) of Trusts*, section 377 (1959).

21 U.S.C. section 802(16) defines marijuana as “all parts of the plant *Cannabis sativa* L. whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin.”

21 U.S.C. section 812(c), Sch. I(c)(10) lists marijuana as a hallucinogenic substance and includes it on schedule I of the Schedules of Controlled Substances. A schedule I substance is a substance that (1) has a high potential for abuse; (2) has no currently accepted medical use in treatment in the United States; and (3) there is a lack of accepted safety for use of the drug under medical supervision.

21 U.S.C. section 841(a), known as The Controlled Substances Act, states that it is illegal for anyone to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance.

Revenue Ruling 61-170, 1961-2 C.B. 112 holds that a nurses’ association, which maintains an employment register primarily for the employment of its members, is not entitled to exemption under section 501(c)(3). The organization is primarily engaged in the performance of personal services by operating an employment service principally for the benefit of its members. Public participation in the management and support of the organization is negligible. It draws its support primarily from members, and a board of trustees composed of professional nurses controls the organization without public participation of any kind. Therefore, the organization is not free from substantial private benefit considerations in the operation of the nurses’ register.

Revenue Ruling 69-175, 1969-1 C.B. 149, holds that a nonprofit organization formed by parents of pupils attending a private school that provides school bus transportation for its members’ children serves a private rather than a public interest. The organization’s income approximately equals the expenses involved in its operations.

Revenue Ruling 75-384, 1975-2 C.B. 204, holds that a nonprofit organization, whose purpose was to promote world peace, disarmament, and nonviolent direct action, did not qualify for exemption under sections 501(c)(3) of 501(c)(4). The organization’s primary activity was to sponsor antiwar protest demonstrations in which demonstrators were urged to violate local ordinances and commit acts of civil disobedience. Citing the law of trusts, the ruling stated that all charitable organizations are subject to the requirement that their purposes cannot be illegal or contrary to public policy.

*United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483, 490 (2001), reiterates that there is only one exception from the Act for cannabis: Government-approved research projects. It is clear from the text of the Act that Congress has made a determination that marijuana has no medical benefits worthy of an exception.” *Id.* at 493.

In *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279, 283 (1945), the Supreme Court held that the “presence of a single ... [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly ... [exempt] purposes.”

In *Ould v. Washington Hospital for Foundlings*, 95 U.S. 303, 311 (1877), the Court noted that “[a] charitable use, whether neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man.”

In *Mysteryboy Inc. v. Commissioner*, T.C. Memo 2010-13 (2010), the Tax Court held that the organization failed the operational test partly because the organization proposed to promote illegal activities.

In *Harding Hospital, Inc. v. United States*, 505 F.2d 1068, 1071 (6<sup>th</sup> Cir. 1974), the court held that an organization has the burden of proving that it satisfies the requirements of the particular exemption statute. The court noted that whether an organization has satisfied the operational test is a question of fact.

### Application of Law

Based on the information you provided in your application and supporting documentation, we conclude that you are not organized and operated exclusively for exempt purposes under section 501(c)(3) of the Code. An organization can be recognized under section 501(c)(3) only if it is both organized and operated exclusively for charitable, educational, or other exempt purposes. As detailed in section 1.501(c)(3)-1(a)(1) of the Regulations, if an organization fails to meet either the organizational test or the operational test, it is not exempt.

You do not satisfy the operational test, as detailed in section 1.501(c)(3)-1(c)(1) of the Regulations. Whether an organization operates exclusively in furtherance of an exempt purpose is a question of fact. As detailed in *Harding Hospital*, 505 F.2d at 1071, an organization seeking tax-exempt status under section 501(c)(3) of the Code carries the burden of proving that it satisfies the requirements of the statute. Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. at 283, the presence of a single nonexempt purpose if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

The common law of trusts specifies that a charitable trust cannot be created for an illegal purpose. See *Restatement (Second) of Trusts*, section 377. Similarly, the Supreme Court noted in *Ould v. Washington Hospital for Foundlings*, 95 U.S. at 311, that “[a] charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man.” Like a trust, a section 501(c)(3) organization cannot be created for a purpose that is illegal. See Revenue Ruling 75-384, supra; *Mysteryboy Inc. v. Commissioner*, T.C. Memo 2010-13 (2010) (organization that encouraged sexual activity with minors with the goal to repeal child pornography and rape laws was not exempt from federal income taxation; activities of the organization violated public policy as reflected in federal and state laws).

Your primary activity, the distribution of cannabis, is illegal. Federal law does not recognize any health benefits of cannabis and classifies it as a controlled substance, as detailed in 21 U.S.C. section 812(c), Schedule I(c)(10). Federal law, under 21 U.S.C. section 841, prohibits the manufacture, distribution, possession, or dispensing of a controlled substance. Additionally, as detailed in *United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. at 493, Congress has determined that marijuana, as defined in 21 U.S.C. section 802(16), has no medical benefits worthy of an exception to the general rule that the manufacture and distribution of cannabis is illegal.

Current federal law prohibits the use of cannabis except in limited circumstances; those limited circumstances do not include the use of cannabis for medicinal purposes. The fact that B legalized distribution of cannabis to a limited extent is not determinative because under federal law, distribution of cannabis is illegal. Because you advocate and engage in activities that contravene federal law, you serve a substantial nonexempt purpose.

You also operate for private purposes, rather than the public interest. Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Specifically, an organization that operates primarily for the

benefit of its members serves the interests of a select group of individuals, rather than the community's or public's interest. As detailed in Revenue Rulings 61-170 and 69-175, a business or activity that assists the community incidentally and only provides benefits to a limited number of members of the community more than incidentally is not charitable.

To satisfy the organizational test, an organization's organizing document, or subsequent amendments, must limit its purposes to those listed in section 501(c)(3). Additionally, the organizing document must not expressly empower the organization to engage, more than insubstantially, in activities that are not in furtherance of those exempt purposes.

You do not satisfy the organizational test described in section 1.501(c)(3)-1(b)(1)(i) of the Regulations. Your stated purpose in section 1.02 of your bylaws indicates that you are organized to provide courier services to qualified patients; this is broader than the purposes specified in section 501(c)(3) and you are not considered to be organized exclusively for one or more exempt purposes, as described in section 1.501(c)(3)-1(b)(1)(iv) of the Regulations.

Lastly, you stated in Form 1023, Part II, Item 3 that you are an unincorporated association. You did not enclose a copy of your articles of association, constitution, or other similar organizing document that is dated and includes at least two signatures. You have not included documentation from an organizing document limiting your purposes to one or more exempt purposes under section 501(c)(3) of the Code.

### **Conclusion**

Based on the facts and information submitted, you are not organized and operated exclusively for exempt purposes. Your primary purpose of distributing cannabis not only violates federal law, but also furthers a substantial nonexempt purpose. You also operate for private purposes rather than the public interest. An organization that operates primarily for the benefit of its members serves the interests of a select group of individuals, rather than the community's or the public's interest. A business or other activity that assists the community incidentally and only provides benefits to a limited number of members of the community more than incidentally is not charitable. Therefore, you are not described in section 501(c)(3) of the Code.

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 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*.

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  
Ruling and Agreements

Enclosure:  
Publication 892