



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

Release Number: **201617012**  
Release Date: 4/22/2016  
UIL Code: 501.03-30  
501.36-01

Date: January 26, 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: December 2, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date

C = State

D = Year

t dollars = Amount

v dollars = Amount

w dollars = Amount

x dollars = Amount

y dollars = Amount

z dollars = Amount

**UIL:**

501.03-30

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

**Facts**

You were incorporated on B in the state of C. Your Articles of Incorporation state that the purposes for which you were formed include providing information and training to softball and baseball umpires and coordinating, scheduling, and assigning professional softball and baseball umpires for little leagues, adult softball and baseball leagues, and softball and baseball tournaments. Your purposes also include maintaining a forum for softball and baseball umpires to come together to share and obtain information, establishing and promoting sports and sportsmanship ideals, and promoting friendship among members through meetings and social gatherings. Your Articles of Incorporation go on to state that upon dissolution your assets will be distributed for one or more exempt purposes within the meaning of Section 501(c)(7) of the Internal Revenue Code.



Your Constitution states that your objectives are to uphold and promote high ethical standards among baseball officials, provide an instructional program to train and qualify members to officiate baseball games, and encourage a knowledge of baseball rules and mechanics among members. Your members are those who have paid their annual dues, met the qualification requirements, and maintain a professional and ethical relationship with you and your members as well as the teams served and the community. The qualifications for membership as listed in your bylaws include passing the qualification examination with a score of 80% or higher, satisfactorily meeting field clinic requirements, and attending the required number of meetings.

Section 4 of your bylaws provides information about game assignments. None of your members are guaranteed to receive a game, game assignment, or schedule. Only quality instruction and related materials are guaranteed to members. Section 4 states that none of your umpires shall accept any contest except from your assignor unless otherwise approved by the assignor. Section 6 of your bylaws states that all members should conduct themselves as professionals and all officials should be qualified to umpire, know the rules, arrive on time, wear the proper attire and equipment, and carry and maintain your sport's officials' insurance.

Your Board of Directors includes an Instructional Chairperson who is responsible for carrying out your training program, maintaining records of all grades, ruling on questions of rules and mechanics, establishing your instructional program, and recruiting and directing instructors. For your training, you bring in officials from an academy before the start of the season to hold a one day clinic. You also use field time during the winter to evaluate new umpires and you provide various materials on rules and decisions.

Your Board of Directors also includes an Assignor who will ensure that all games that you are responsible for are staffed with the appropriate number of qualified officials. Games from the league are given out by the teams who need their use and tournaments are done via the schedule from the tournament company. Fees for teams are paid directly to the umpires but fees for tournaments are paid to you by check. You then send out an end of year Form 1099 to all umpires.

You submitted a D fee schedule that game fees range from x dollars to y dollars per umpire depending on the ages of the players and number of innings. If only 1 umpire shows, the fee ranges from y dollars to z dollars. The tournament fees range from v dollars to w dollars and t dollars per travel game is owed to the Assignor. The t dollars is to be kept in your fund to help keep dues down and to be used at the end of the year for taxes, training, and a year end dinner. With the travel games, the Assignor sends out a monthly statement to each member with the t dollar game fees. The invoice must be paid within 10 days of receipt or the Assignor may withhold future assignments or invoke other sanctions.

Your financial data shows that the majority of your revenue is from umpire fees and the majority of your expenses are for professional fees.

Your final activity consists of an end of year banquet where you do a season recap and go over news for the next year.

### **Law**

Section 501(c)(3) of the Internal Revenue Code (the Code) describes corporations organized and operated exclusively for charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.



Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that in order to be exempt as an organization described in section 501(c)(3), 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.

Treasury Regulation Section 1.501(c)(3)-1(b)(1)(i) 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.

Treasury Regulation Section 1.501(c)(3)-1(b)(4) 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.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which 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.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Rev. Rul. 61-170, 1961-2 C.B. 112, states that an association 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 exempt under Code section 501(c)(a) as an organization described in section 501(c)(3).

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.

Rev. Rul. 80-215, 1980-32 I.R.B. 9, states that organization that is formed to develop, promote, and regulate a sport for individuals under 18 years of age by organizing local and statewide competitions, promulgating rules, organizing officials, presenting seminars, distributing a newsletter, and otherwise encouraging growth of the sport 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. 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.

### **Application of law**

You are not as described in Section 501(c)(3) of the Code because you are not organized and operated exclusively for exempt purposes. 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 Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). 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 Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You fail the operational test as you are not operated exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). Your activities include coordinating, scheduling, and assigning your member umpires to baseball and softball games and tournaments. The umpires get paid fees for their services and you also collect fees from the umpires for travel games that you assign to them. Coordinating scheduling, and assigning games is a service to your members and does not fulfill an educational or charitable purpose. As explained in Treas. Reg. Section 1.501(c)(3)-1(c)(1), you will not be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial amount of your activities further nonexempt purposes.

You are not like the organization in Rev. Rul. 80-215. Although you may organize officials for softball and baseball games, the games which you are involved in are not limited to those for individuals under 18 years of age. Your activities therefore do not fulfill a charitable purpose. Additionally, you are not like the organization in Rev. Rul. 77-365 because your activities mainly involve providing umpires for recreational softball and baseball games. You do not provide any education to the individuals playing the games. Although you do provide some education to the umpires, your main activity is coordinating and scheduling umpires. Your activities are therefore not exclusively educational.

Like the organization in Rev. Rul. 61-170, you were formed to provide employment opportunities for your members by coordinating, scheduling, and assigning your member umpires to baseball and softball games and tournaments. Per Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), an exempt organization must serve a public rather than a private interest. By providing these services to your members, you are serving the private interests of your members and do not meet the qualifications for exemption under Section 501(c)(3) of the Code.

You are very similar to the organization described in Better Business Bureau of Washington, D.C., Inc. because 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. Although you may have some educational activities such as holding a one day clinic each year before the start of the season and providing training and informational materials to your members, any educational purposes are overshadowed by the commercial nature of your activities. You are responsible for staffing games with qualified officials. You provide a service to your members by matching your member umpires with jobs where they are paid for their services. Fees for teams are paid directly to the umpires. Fees for tournaments are paid to you. You also collect a t dollar fee from your member umpires for each travel game they are assigned and your Assignor sends out a monthly statement to each member with their t dollar game fees. The majority of your revenue is from umpire fees and the majority of your expenses are professional fees. At the end of the year, you send Form 1099 out to all umpires. You are therefore operating in a commercial manner.



## **Conclusion**

Based on the information provided, you do not qualify for exemption under section 501(c)(3) of the Code. You are not organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code because you operate in a commercial manner for the private interests of your members.

## **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