



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

Release Number: 201619010
Release Date: 5/6/2016
UIL Code: 501.03-19
501.03-30
501.03-08
501.03-30

Date: February 11, 2016

Employer ID number:

Contact person/ID number:
Customer Service
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 25, 2015

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Category:

Legend:

O = State

P = Date

R = County

S = For-Profit Association

UIL:

501.03-19

501.03-30

501.03-08

501.03-00

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 described below.

Do you meet the requirements under Section 501(j) of the Code? No, for the reasons described below.

Facts

You were incorporated in the State of O on P as a mutual benefit corporation.

Your Articles of Incorporation state, "... the specific purpose of this corporation is to benefit racers, promoters and spectators of motorsports in R." You stated that you have amended your organizing document to change to a public benefit corporation which promotes and provides amateur sporting events that benefits the entire community in allowing amateur racers a venue to learn and practice the sport and providing the community at large family entertainment of watching the sport. However, you did not provide a filed copy of this amendment.

You provide a racing venue for stock car drivers to participate and the community to attend. You also sponsor the fireworks display on the July 4th. At the conclusion of the evening race, the gates are open and the community is welcome to enjoy the fireworks display at no charge.

You conduct approximately seventeen stock car races per year from April through September. Entry fees are charged for each car and driver competing in the races. Spectators pay a fee to attend the races. Advertising in race programs, airtime during race events and on displayed banners are sold to area businesses. The advertising brochure you submitted indicates that advertising purchases are tax deductible and support from their business will help make the best family entertainment possible. Donations are also accepted from local businesses and individuals to support the local July 4th fireworks display.

Your revenues include contributions, membership dues, back gate receipts, front gate receipts, concession stand receipts, and other miscellaneous receipts. Drivers pay entry fees to compete for trophies and cash prizes. Membership in the organization is open to the general public for a fee.

The racetrack is owned by the county fairgrounds and is provided to you for rent. Cash prizes for first place finishers can range from a few dollars to up to \$2000 for the sanctioned races. Your expenses include:

- Disbursements for members - Payouts, trophies, S fees and points payouts,
- Occupancy – Rent, utilities and operating expenses, and
- Operating expenses – Advertising, insurance, maintenance, fuel, taxes and licenses.

For the 2011 through 2014 years, disbursements for member represented about 35% of your expenses, occupancy costs were 21% and operating expense less the cost fireworks was about 29% of your total expenses.

Your activities are primarily conducted by volunteers; however, you have stated that three independent contractors are paid from \$100 to \$150 per event for work performed.

Persons age thirteen and up are welcome to race in the beginner class. Novice racers are coached in all aspects of racing. You give them a rule book which they are expected to learn. The young drivers are taught sportsmanship, mechanics of a racing vehicle, and are encouraged to attend sessions where drivers spend time on the track in practice situations to improve their skills. Individualized training is performed either by a parent or another racer who is willing to share knowledge with the beginners. Beginners may attend five training days where experienced drivers are on hand to provide any help the new drivers may need. Your event schedule does not list any specific educational events or training classes.

On your website, you have listed your schedule of events, rankings and point totals, race payout schedule, ticket information and back gate fees, running rules, and a list of sponsors. Upon further review of your website, there are no formal educational events or training classes listed or offered.

You are a member of S, a national organization that sanctions national and international motor sports events. According to the website you provided, S is owned by an individual and has experienced remarkable growth in the last decade. You stated that you attempt to prepare participants to compete in these national and international events by supporting not only a beginner class where they can learn the art and mechanics of stock car racing, but also providing a place where they can practice and hone their skills in order to compete on a national or international level. The only requirement to participate in your activities is to meet the age requirements of each class of racing. You stated that you do not solely devote yourselves to improving the

performance of a small group of elite athletes nor are you organized for the sole purpose of improving the health of the general public. Instead, you provide affordable family entertainment.

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, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in subsection (i), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.."

Section 501(j)(2) of the Code defines the term "qualified amateur sports organization" to mean any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

Section 1.501(c)(3)-1(a)(1) of the Tax 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 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 Tax 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(c)(1) of the Tax 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 must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Tax Regulations provides an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Tax Regulations 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 interest.” Thus if an organization is operated to benefit private interests rather than for public purposes, or is operated so there is prohibited inurement of earning to the benefit of private shareholders or individuals, it may not retain its exempt status.

Rev. Rul. 56-475, 1956-2 C.B. 308, provides that an organization formed for the purpose of promoting and fostering the appreciation and techniques of the operation of stock cars and which conducts stock car racing events sponsored by community organizations under agreements whereby a certain portion of the profits is received by the organization for payment of expenses and prizes to members who participate in the races does not qualify for exemption from Federal income tax as an organization described in section 501(c)(7) of the Internal Revenue Code of 1954.

Rev. Rul. 70-4, 1970-1 C.B. 126, provides that an organization whose activities consisted primarily of the promotion and regulation of a sport for amateurs is not exempt as a section 501(c)(3) educational organization because the promotion and regulation of a sport for amateurs as described neither improve nor develop the capabilities of the individual nor instruct the public on subjects useful to the individual and beneficial to the community.

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), describes an organization whose sole activity was to provide consulting services for a fee to nonprofit organizations. It provided qualified persons to perform research projects for its clients. The fees charged by the organization were set at or close to cost but were not less than the organization’s full cost of providing its service. The organization was denied exemption because it operated in a commercial, nonexempt manner. The provision of managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The Court held that the organization was not operated exclusively for charitable, educational or scientific purposes within the meaning of section 501(c)(3) of the Code.

In Hutchinson Baseball Enterprises v. Commissioner, 73 T.C. at 144 1979 U.S. Tax Ct. LEXIS 30, affd. 696 F.2d 757 (10th Cir. 1982), the organization funded and operated an amateur baseball team, leased and maintained baseball fields for the use of Little League, American Legion teams and a baseball camp, and provided coaches for Little League teams. The court held, and the Tenth Circuit affirmed, that the promotion, sponsorship and advancement of amateur sports is a charitable purpose within the meaning of section 501(c)(3).

In Better Business Bureau v. United States, 326 U.S. 278 (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

Application of Law

Based on the facts presented in your application, we have concluded that you are neither organized nor operated for exempt purposes as required in section 1.501(c)(3)-1(a)(1) of the Tax Regulations. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code.

Your organizing document states, “The specific purpose of this corporation is to benefit racers, promoters and

spectators of motorsports in R.” This is not an exempt purpose described under section 501(c)(3) of the Code. Contrary to the limits imposed by Section 1.501(c)(3)-1(b)(1)(i) and Section 1.501(c)(3)-1(c)(1) of the Regulations, you are empowered to engage substantially in activities not in furtherance of exempt purposes. Therefore, you do not meet the organizational test.

According to Section 1.501(c)(3)-1(d)(1)(ii), you must demonstrate that you are not operated to benefit private interests. Unfortunately, you have not met your burden of proving you are operated primarily to serve public rather than private interests. In reaching this conclusion, we considered:

- Whether you are a qualified educational, charitable or amateur sports organization, and
- Whether your focus on providing a venue to for motor sport races results in private benefit.

Like the organizations that failed to qualify for exempt status in Rev. Rul. 56-475 and Rev. Rul. 70-4, you promote sports by conducting races and by inviting people to learn the rules and participate in your race events. You enforce standards for the equipment to be used and the official rules of the games. You do not have a regular program of instruction. In fact, your primary activity is devoted to providing a facility and scheduling events for racers who can earn substantial cash prizes based on the driver’s place when the race is finished. You use your revenues to defray expenses and to pay prizes to drivers who take part in the racing events. You are engaged in business with the public and are not operated exclusively for educational or charitable purposes.

You are unlike the organization in Hutchinson Baseball Enterprises v. Commissioner, 73 T.C. at 144 1979 U.S. Tax Ct. LEXIS 30, affd. 696 F.2d 757 (10th Cir. 1982). In that case, the organization's primary activities resulted in the furtherance of amateur athletics. The organization provided coaching and instruction for children and recruited only top amateur baseball players to play on the team it sponsored. The organization also hired a coach, general manager and trainer to work with the team. The players were not paid for participation on the team, and they did not share gate receipts.

In contrast, you provide no formal or ongoing instruction to your members, and you pay cash prizes to the top finishers. Nearly a third of your expenses from 2011 to 2014 involved fees paid for and prizes awarded to top race finishers. While the paying public derives some benefit, a substantial benefit is provided to the racers who participate in your events. Compensating the winners of your events is not a characteristics of an organization operated in the furtherance of amateur athletics.

Like B.S.W. Group, Inc. v. Commissioner, you operate in a commercial manner. You derive your income from selling advertising, ticket sales, participation fees and concessions. You advertise, conduct and market your races in a commercial manner. Your fees are not set on a scale that takes into account the attendee or participant’s ability to pay. The only event that is open to the non-paying public is your 4th of July event.

The remaining issue is whether you are a "qualified amateur sports organization" described in section 501(j) of the Code. Unlike organizations which operate exclusively to foster national or international amateur sports competition:

- The only prerequisite to participation in your program is that the athlete must meet a minimum age requirement.
- You do not provide formal instruction beyond giving the participant the rule book. Individualized training is provided only if a parent or another racer is willing to share their knowledge with the beginner racer.
- You are not devoted to improving the performance of a small group of elite athletes.

- Your participants are not required to have a certain level of talent and achievement in order to receive support.
- You do not provide intensive daily training to prepare you participants for national or international completion. Instead, you provide weekend events that are open to and attract a broad range of competitor's.
- You charge the public to attend, and pay cash awards to the winning drivers.

Therefore, you are not an amateur sports organization under section 501(j) of the Code.

Like Better Business Bureau v. United States, your non-charitable purposes are substantial in nature. Accordingly, we find you do not qualify for exemption under section 501(c)(3).

Conclusion

Based on the facts and information submitted, you are not organized and operated exclusively for exempt purposes. 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). Likewise, you do not meet the operational test because you benefit racers and promoters. You do not serve a charitable class, and any educational activities are insubstantial in comparison to you motor sporting activities. And finally, after consideration of all the facts and circumstances, we concluded that you do not support development of amateur athletes for participation in national or international competition and conduct your activities in a commercial manner.

Accordingly, you do not qualify for exemption under 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. 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