



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: 201632022
Release Date: 8/5/2016

Date:
May 11, 2016
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-25

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: May 18, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

T = individual
u = number
V = city
W = date
X = state
Y = county
Z = historical event

UIL:

501.03-25

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 and operational tests under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You were incorporated in X on W. Although you never filed for exempt status prior to your Form 1023 submission in _____, our records indicate you have been operational as a self-declared Section 501(c)(7) entity. Your Articles of Incorporation initially stated you were formed to promote and advance the economic growth and welfare of the citizens of V and Y, in X. Before filing Form 1023, you amended your purposes to indicate you are formed for solely charitable purposes, including the production of festivals and other similar activities promoting the heritage, growth and welfare of the citizens of Y. Neither your original Articles of Incorporation, nor the subsequent amendment, provides any provision to insure that assets will be distributed for 501(c)(3) purposes when you are dissolved.

Your Constitution indicates that your purpose is to present an annual masked parade followed by a ball, act as a Mardi Gras society and operate as a nonprofit civic organization for the purpose of promoting and advancing

the economic growth and welfare of Y in X. You are a membership organization, limited to u members, each paying around \$500 annually.

Among the committees that you designate, per your Bylaws, is a dignitary committee. This committee oversees the appointment of various positions within your organization, including T, queen of the , pirates of the court and princesses of the court. You also have a section of your Bylaws specifically for costumes, including what each costume should look like for each society member.

Per Form 1023, you list your primary activities as the promotion of cultural festivals in V, for the benefit of citizens and visitors. You also participate in other festivals in the northern part of your state. Festivals are planned, organized and conducted by your members in conjunction with local government. These festivals include local school and band organizations, and “promote the historical and cultural aspects of the V area and Southeastern US”. The festivals are also a destination for vacationers. Two of these festivals are conducted annually. You state that through these festivals you are able to raise funds for donations to local children and school organizations.

Festivals are free with live music, parades, fireworks and other family activities. You also attempt to intertwine the festivals with sharing and preserving the history of local pirates or privateers, notably your namesake who participated in a nearby battle. This historical information is presented through your floats, scripted performances and re-enactments.

You work with the local tourism council, local government and police to produce the events. The festivals are advertised to attract out of town tourists. Copies of advertisements or materials used to promote the festivals were not provided.

In addition to the festivals you have two annual galas. You indicate the primary emphasis of these is to share and preserve the history of local pirates and privateers. Your members and their guests are invited to attend.

Per your website, “ ” by enjoying the glamour, spectacle and pageantry that surround the Mardi Gras celebration and to keep that spirit and tradition alive in Y. You promote your king and queen, as well as your next “fun filled” festival. Your annual calendar consists of festivals, balls, parades, and an annual meeting.

You are funded almost exclusively by membership dues. Your expenses consist of costs incurred to plan, promote and conduct your events.

Law

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to qualify under Section 501(c)(3) of the Internal Revenue Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treasury Regulation Section 1.501(c)(3)-1(b)(4) states in part 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 or by operation of law, be distributed for one or more exempt purposes, or to a State or local government, for a public purpose, or to the Federal government, or to a State or local government, for a public purpose, or by a court to be used in a manner to best accomplish the general purposes for which the dissolved organization was organized.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states 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 Internal Revenue 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.

In Revenue Ruling 67-216, 1967-2 C.B. 180, 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 qualify for exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The organization's activities and exhibits were planned and managed by or in collaboration with persons whose business it was to inform and instruct farmers and the general public on agricultural matters (*i.e.*, home demonstration agents, county agricultural agents), and the resulting displays were designed to be instructive. The presence at the fair of recreational features such as midway shows, refreshment stands, and a rodeo are incidental to the fair's overall educational purpose.

In Revenue Ruling 68-224, 1968-1 C.B. 262, a nonprofit organization that conducted an annual festival centered around regional customs and traditions was found to be qualified for exemption from federal income taxes under Section 501(c)(4) of the Internal Revenue Code. The festival took place in an agricultural region where interest in horses and Western traditions ran high and enjoyed the broad involvement of local citizens. It typically featured a banquet or barbecue, a parade made up of local organizations and floats depicting community history, various contests relating to dress and costumes traditional of the area, and a rodeo. The revenue ruling held that, in carrying on these activities, the organization provided recreation for the community and generally promoted civic betterments and social improvements.

Revenue Ruling 77-111 describes two organizations promoting business activity. One organization was formed to increase business patronage in a deteriorated area by providing information on shopping in the area and providing a telephone information service on transportation and accommodations. Another organization was formed to revive declining sales in a particular area and purchased land for the construction of a retail center. Neither organization qualified for exemption under IRC 501(c)(3). The overall thrust was to promote business rather than to accomplish exclusively 501(c)(3) objectives.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court stated that the presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under Section 501(c)(3) of the Internal Revenue Code regardless of the number or importance of statutorily exempt purposes.

In The Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), an organization operating a religious retreat facility did not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code because it failed to show that the retreat facility was operated exclusively for religious purposes. Although the organization's mountain lodge offered guests religious, recreational, and social activities; however, none were regularly

scheduled or required. The court concluded that the organization had not met its burden of proof to show that the lodge was operated primarily for an exempt religious purpose and that the recreational and social activities at the lodge were only incidental to a religious purpose.

Application of law

You are not described in Section 501(c)(3) of the Internal Revenue Code because you are not organized and operated exclusively for exempt purposes according to Treas. Reg. Section 1.501(c)(3)-1(a)(1). You do not meet the organizational test under Section 501(c)(3) because, as stated in Treas. Reg. Section 1.501(c)(3)-1(b)(4), your assets are not dedicated upon dissolution for a Section 501(c)(3) purpose. You do not meet the operational test under Section 501(c)(3) because, as stated in Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not operated for one or more Section 501(c)(3) purposes, namely, you are operated for social and recreational purposes. The fact that you make distributions of funds for charitable purposes does not override substantial non-Section 501(c)(3) purposes. Further, the promotion of welfare for the local citizens through civic activities also does not serve exclusive Section 501(c)(3) purposes.

Although you provide public fairs and exhibitions, you are not similar to the organization discussed in Rev. Rul. 67-216. The organization in the ruling offered instructional or educational opportunities. Here, any instructional or educational opportunities, such as presentations of historical significance or value, appear to be incidental to your overall social and recreational purposes. Rather, it appears that your festivals are presented purely for recreational and entertainment value.

You are similar to the organization described in Rev. Rul. 68-224. That organization conducted an annual festival centered around regional customs and traditions. It typically featured a banquet or barbecue, a parade made up of local organizations and floats depicting community history, various contests relating to dress and costumes traditional of the area. While you are similar to this organization, it received exemption under Section 501(c)(4), not 501(c)(3), as it provided recreation for the community and generally promoted civic betterments and social improvements.

Similar to the organization in Schoger, you have not met your burden to clearly delineate any 501(c)(3) purposes from non-501(c)(3) purposes. You state that your festivals promote the cultural and historical significance of the area. However, your website and other supporting documents make no reference to any historical importance or meaning of your planned events. Instead, you promote the fun filled aspects of your activities, and lean more towards having social rather than charitable purposes. Combined with your other main activity, the galas, your conducting activities for historical and cultural 501(c)(3) purposes are incidental to their true social, non-501(c)(3) nature.

Similar to Rev. Rul. 77-111, promoting business interests in an area is normally not a 501(c)(3) purpose. When the overall goal is simply to promote the area, increase tourism, and benefit local business, this does not serve Section 501(c)(3) purposes. You have submitted no information to the contrary that this is a deteriorated or struggling area, nor any information on the type of businesses being helped by the promotion of your festival. The promotion you conduct for the area to benefit local businesses is not a Section 501(c)(3) purpose.

As noted in Better Business Bureau, the presence of a single nonexempt purpose, if substantial, will prevent an organization from being recognized for exemption under Section 501(c)(3) of the Code. Your social and recreational activities are substantial in nature. Thus, you are precluded from being recognized under Section 501(c)(3).

Your position

You do not agree with our assessment that you are not operated exclusively for Section 501(c)(3) purposes. You indicated that the funds raised by your festivals are donated to local children and school organizations, and added that your festivals have a dual educational and charitable purpose. The festivals are open to the public and include sharing and preserving local history. You promote your area as a family vacation destination, which benefits the local businesses and supports the social welfare of the area.

Our response to your position

Your educational and/or charitable activities are incidental to your overall social and recreational purposes. Your contention that your festivals are educational in nature, and charitable donation of funds, is overshadowed by the recreational aspects and entertainment value of your activities. You have not demonstrated how you educate the public about the local history or customs. Providing floats in a parade and dressing to depict the past pirate culture appears to only be a portion of the events that are clearly held for the purpose of entertaining the public. You did not provide any information to lead to a conclusion that your galas and balls are anything other than social events.

Conclusion

You are not operated exclusively for exempt purposes under Section 501(c)(3), but instead you are operated more than insubstantially for social and recreational purposes. Consequently, you do not meet the operational test under Section 501(c)(3) either. Further, you are not organized exclusively for exempt purposes and fail the organizational test under Section 501(c)(3) of the Code. Thus, you do not qualify for exemption under Section 501(c)(3). Contributions to you are not deductible under section 170 of the Code. As you have only applied for exemption under Section 501(c)(3), we have not considered whether or not you qualify for exemption under any other subsection.

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