



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

Number: **201632023**
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: 501.03-30

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: March 18, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State

C = Date

D = Location

F = Date

z dollars = Amount

UIL:

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

Facts

You were incorporated in the state of B on C. You submitted Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on F.

Your purposes as stated in your Articles of Incorporation are:

...to collect funds from its members and expend those funds for the marketing, advertising and promotion of the D for the benefit of all the Members and to represent the interests of the tenants of D in connection with issues involving the operation and administration of the D by its landlord, including but not limited to issues relating to administration of the marketing funds collected by the landlord, common area maintenance, signage, and community events affecting the D . . .

Your Articles of Incorporation indicate that upon dissolution your assets, "...shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes."

Per your Articles of Incorporation, your membership consists of persons leasing a unit or units in D who choose to pay your required assessments. Eligibility for membership is automatic upon the transfer and/or execution for a lease for a unit in D. All members are entitled to vote on all matters except those who are in default on any obligations to you. Merchants pay into your fund based on the square footage of their unit.

Your activities include three events and two annual merchant meetings. All events and meetings are held at D.

The first event is the _____ Event and is open to anyone. The _____ Event is held twice a year on a Saturday night. Stores participate by serving wine and a snack. The cost to attend is z dollars. Each person participating receives a wine glass and a passport which is stamped at each store. The passport is then turned in at the end of the evening to be entered into a drawing for a gift certificate. Attendance has averaged around 600 people at each event. Expenses for the _____ Event include wine, advertising, barricades, collateral printing, wine glasses, set up rentals such as chairs and tables, permitting and license, sales tax, and security. The proceeds from the event after expenses are donated to a charity of your choice.

The second event is the Halloween Event. The Halloween Event is free and open to all. At the event, D stores pass out candy to the approximately 700 children that attend. Expenses for the event include candy, barricades, and advertising.

The third event is the Thanksgiving Holiday Event. It is free and open to all. The Thanksgiving Holiday Event includes arts and crafts projects for children, Santa Claus, snacks, and lighting the holiday tree. Expenses for the event include advertising, barricades, and arts and crafts project supplies.

You also have merchant meetings twice a year. These meetings are social gatherings where you discuss issues and concerns such as property management and social media ideas. You also review the budget.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, educational, and scientific purposes.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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 of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. 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.

Treas. Reg. 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.

Treas. Reg. 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 that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Rev. Rul. 73-411, 1973-2 C.B. 180, held that a shopping center merchants' association whose membership is restricted to and required of tenants of a one-owner shopping center and their common lessor, and whose activities are directed to promoting the general business interests of its members, does not qualify as a business league or chamber of commerce under section 501(c)(6) of the Code. The organization's activities include serving as a means for communication between the owner and tenants and arranging and conducting various seasonal and other promotional affairs designed to stimulate the overall volume of trade in the center.

Rev. Rul. 77-111, 1977-1 C.B. 144, held that an organization formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations is not operated exclusively for charitable purposes and does not qualify for exemption under section 501(c)(3) of the Code. Similarly, an organization whose purpose is to revive retail sales in an area of economic decline by constructing a shopping center does not qualify for exemption.

Rev. Rul. 78-86, 1978-1 C.B. 151, held that the Service will not follow the *Monterey Public Parking Corporation* decision that an organization formed by merchants to establish and operate a public off-street parking facility that provides free or reduced rate parking for the merchants' customers through a validation stamp qualifies for exemption as either a charitable corporation under section 501(c)(3) of the Code or a social welfare organization under section 501(c)(4). A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores.

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

You are not organized and operated exclusively for charitable, educational, or scientific purposes consistent with Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) and therefore fail to meet the organizational and operational tests. Specifically, the facts above indicate that you are not operated for exempt purposes but for the private interests of your members.

Organizational Test

You do not meet the requirements in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Your Articles of Incorporation state in part that you were formed: "to collect funds from its members and expend those funds for the

marketing, advertising and promotion of the D for the benefit of all the Members and to represent the interests of the tenants of D in connection with issues involving the operation and administration of the D by its landlord.” Because you are organized to benefit your members by collecting funds and using them for marketing, advertising, and promoting D, your purpose clause does not describe exclusive 501(c)(3) purposes and you fail the organizational test. Moreover, you fail the organizational test because your Articles of Incorporation do not have a valid dissolution clause that dedicates 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).

Operational Test

You are not described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because more than an insubstantial part of your activities are not in furtherance of a 501(c)(3) exempt purpose. You are operating for the private interests of your members. Like the organization in Better Business Bureau v. United States, supra, you operate for the substantial non-exempt purpose of marketing, advertising and promoting D. By marketing, advertising, and promoting D, you are working to bring business to your members who lease units in D. You hold several events throughout the year that bring people to D. Additionally, the events you hold, the Event, the Halloween Event, and the Thanksgiving Holiday Event are social and recreational in nature and do not fulfill a 501(c)(3) purpose.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), because you are operating for the private interests of your members. Your membership is made up of persons leasing a unit or units in D who choose to pay your required assessments which are used for marketing and promoting D where your members are tenants. You represent the interests of the tenants of D in connection with issues involving the operation and administration of D by the landlord. You have meetings twice a year where you discuss issues and concerns such as property management and social media ideas. Your events are used as a vehicle to get people to D and to each store. At the Event, each participant receives a passport which they have to have stamped at each store. At the Halloween Event, participants have to go to each store to receive candy. Like the organizations in Rev. Rul. 77-111, your activities are directed at generally promoting business and benefiting your members who are tenants in D, rather than accomplishing a 501(c)(3) purpose. Your activities are also like those of the organization in Rev. Rul. 73-411. Even though the organization in Rev. Rul. 73-411 applied for exemption under section 501(c)(6) of the Code, you are similar in that you do not qualify for exemption because you are serving the private interests of your members.

By serving the private interests of your members who are merchants at D, you are also like the organization in Rev. Rul. 78-86. You join together to market, advertise, and promote the D and your events are designed to bring people to the D to patronize your stores. Although there may be some public benefit to your events, the events are social and recreational in nature and do not fulfill a 501(c)(3) purpose.

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 contain a valid purpose or dissolution clause. Likewise, you do not meet the operational test because you benefit the private interests of your members and you conduct more than an insubstantial amount of social and recreational activities.

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