



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201640024**
Release Date: 9/30/2016

Date: July 7, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.05-01

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(5) 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.

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.

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 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: May 10, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State

C = Date of incorporation

UIL:

501.05-01

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)(5). This letter explains the basis for our conclusion. Please keep it for your records.

Issue

Do you qualify for exemption under Section 501(c)(5) of the Code? No, for the reasons stated below.

Facts

You were formed in the State of B on C. Your Articles of Incorporation state that you are formed to bring fresh and local products to your community and neighboring communities. You applied for exemption under Section 501(c)(5) of the Code.

You host a market for the general public to purchase products from your vendors once a week for up to 25 weeks per year. You allow vendors to sell any product that is homemade, handmade, home grown or gathered from nature in B. Your vendors sell locally grown produce, organic produce, herbs, flowers, baked goods, cheese, honey and many other specialty items. You charge vendors a flat rate fee based on their participation as a weekly, half season or full season vendor. You lease your space from the local parks and recreation department.

You market yourself as a destination where people can buy healthy food, shop, eat, bring children and pets, meet neighbors, enjoy live music and learn about great causes and events happening nearby. You are responsible for producing and distributing all marketing and promotional materials, operating special events, building and maintaining a website and social media page. You also organize healthy living and cooking demonstrations, book and pay for live music each week, and organize public relations events to promote the market. In addition, you rent the market space, supply volunteer labor, handle logistics and traffic/parking, meet vendor needs, host focus group/strategy sessions for vendors and alert vendors to special events in the region where they can sell their goods.

You partner with and support worthy causes by offering space each week where organizations can promote their own events or build awareness. You occasionally offer support through time, labor, material and goods to these groups. You also partner with the local school system to bring educational activities to the market that reflects the community's agricultural history. You hope to secure state and federal grants for a dedicated shuttle which will bring more seniors and low-income residents so they can have greater access to healthy food and lifestyle choices.

You have published and sell a cookbook with recipes that show readers how to use ingredients from the market. You sell the cookbook, all-natural tote bags and soda to raise funds and as give-away premiums in your marketing campaigns. You host an annual event where the public can purchase tickets for a dinner inspired by local ingredients.

You dedicate 100% of your time and resources towards the operation of the market. You receive 85% of your revenues from vendor fees, 10% from sponsorships and 5% from a customer loyalty program where customers pay a flat fee in return for the option to purchase a discounted item or receive a discounted amount from each vendor each week.

Law

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Treasury Regulation Section 1.501(c)(5)-1 describes organizations covered by Section 501(c)(5) of the Code as labor, agricultural, and horticultural organizations that have no net earnings inuring to the benefit of any member and have as their object the betterment of the conditions of persons engaged in those pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Rev. Rul. 66-105, 1966-1 C.B. 145, held that an organization composed of agricultural producers whose principal activity is marketing livestock as an agent for its members does not qualify for exemption. The sale of members' products with the return to them of the sale proceeds is neither an object nor an activity within the ambit of Section 501(c)(5) of the Code. Therefore, the organization does not meet the requirements of Treas. Reg. Section 1.501(c)(5)-1 and is not exempt under Section 501(c)(5).

Rev. Rul. 74-195, 1974-1 C.B. 135, held that a nonprofit organization formed to manage, graze and sell its members' cattle did not of itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations within the meaning of Section 501(c)(5) of the Code. The principal purpose of the organization was to provide a direct business service for its members' economic benefit. The organization was denied exemption under Section 501(c)(5).

Rev. Rul. 77-153, 1977-1 C.B. 147, held that a nonprofit organization that owns and operates a livestock facility and leases it to local members of a nonexempt national association of farmers for use in implementing the association's collective bargaining program with processors does not qualify for exemption as an agricultural organization. The operation and leasing of a facility for collecting, weighing, sorting, grading, and shipping of livestock, the organization's principal activity, is the providing of a business service to those members who

make use of the national association's collective bargaining program. This service merely relieves the members of the organization of work they would either have to perform themselves or have performed for them. Such activity does not serve an exempt purpose of an agricultural organization under Treas. Reg. Section 1.501(c)(5)-1. Accordingly, the organization does not qualify for exemption from federal income tax under Section 501(c)(5) of the Code as an agricultural organization.

Application of law

You do not meet the qualifications under Treas. Reg. Section 1.501(c)(5)-1 because your activities are not aimed at the overall betterment of conditions within the farming industry. You primarily operate to aid your vendors in the sale of their goods. Providing a location and promotion of products for vendors, in return for a fee, merely relieves your vendors of work they would either have to perform themselves or have performed for them, which precludes exemption under Section 501(c)(5) of the Code.

You are similar to the organization in Rev. Rul. 66-105 in that you provide the market place for vendors to sell their goods where they in turn receive revenue from sales and the proceeds, which precludes exemption under Section 501(c)(5) of the Code.

You are similar to the organization in Rev. Rul. 74-195. By providing a similar service (an outlet for sales of products), you are not bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products or developing a higher degree of efficiency in their operations. Your main activity of operating a market or providing a location for sale of products, precludes exemption under Section 501(c)(5) of the Code.

You are similar to the organization in Rev. Rul. 77-153. The operation and leasing of a facility relieves your vendors of work they would either have to perform themselves or have performed for them, which precludes exemption under Section 501(c)(5) of the Code.

Conclusion

Based on the information provided we conclude that you are not primarily operated as described in Section 501(c)(5) of the Code. You were not formed to improve the grade of member products, but rather to provide a direct business service for your vendors' economic benefit. Accordingly, you do not qualify for recognition of exemption under Section 501(c)(5).

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