



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: May 10, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201731016**
Release Date: 8/4/2017

UIL: 501.00-00, 501.03-04, 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,

Stephen A. Martin
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 2, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Formation date
C = Rank
D = Location
E = Branch of the military

UIL:

501.00-00
501.03-04
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 formed as an unincorporated association on B. You host events for military members stationed at D for morale purposes. Your members are limited to individuals at D who have been promoted to the rank of C.

Your formation document, your Bylaws, in part, state your purpose and objectives are:

- To strengthen cohesiveness within the community of C and raise spirit de corps of the C, by working for the good of the Command, the E, and community
- To provide a medium for the exchange of ideas, information, and professional knowledge to the individuals with the rank of C at D
- To reinforce the responsibilities, leadership, and privileges of C
- To support the Commanding Officer in promoting the morale and well-being of specifically ranked personnel and their family members in both official and social capacities
- To support the morale, welfare, and recreation of the C in good standing; to include, but not limited to, picnics, lunches, and seasonal parties.

In furtherance of your purposes, you host various events, which have included a command wide picnic to boost morale, paintball trips, and various gaming and sports tournaments. On one occasion you donated funds to a specific public charity and assisted them with a community service project.

In order to be in good standing, a member must participate in a minimum of two fundraising, social, or training events per quarter outside of the regularly scheduled meetings by assisting with the set-up, coordination, and on-the-job requirements of events. A member in good standing may be eligible to hold office, chair a committee, vote, and receive a farewell/retirement gift.

Your Bylaws also state that any residual funds or assets left over after paying all liabilities will be donated to the D Recreation Committee.

You sell food to personnel, such as hot dogs and burgers, to raise money for the events you host.

Law

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

Treas. Reg. Section 1.501(c)(3)-1(b)(1) 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 of its activities, in activities which themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization dedicate its assets to an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operating 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 will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 77-366, 1977-2 C.B. 192, states that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under Section 501(c)(3) of the Code.

Rev. Rul. 78-84, 1978-1 C.B. 150, states that an organization formed by citizens of a community to promote civic pride in the community, the state, and the country by providing a color guard and conducting flag-raising and other ceremonies at patriotic and community functions is promoting patriotism, a recognized charitable objective, and 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. 279 (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.

Syrang Aero Club Inc. v. Commissioner, 73 T.C. 717 (1980), describes an organization that owned one airplane which it rented to club members at a low cost. They restricted membership to all members of the Syracuse Air National Guard and civilian employees, active and retired members of all reserve military units, FAA personnel, and dependents of all of the above and their civilian employees. In this case, the United States Tax Court held that this organization was organized and operated for the benefit and recreation of its members and did not qualify for exemption under Section 501(c)(3) of the Code.

Application of law

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests. If an organization fails either the organizational or operational test, it cannot qualify as an exempt organization under Section 501(c)(3).

Your organizing document, your Bylaws, states that your purpose is to strengthen, and boost the morale of your members and support their welfare by engaging in various social activities. You fail the organizational test because your formation document does not limit your purposes to one or more exempt purposes as required in Treas. Reg. Section 1.501(c)(3)-1(b)(1).

Also, your Bylaws state that your assets will go to the D Recreational Committee upon dissolution. It does not appear that the D Recreational Committee is a qualifying organization described in Section 501(c)(3) of the Code. Therefore, you also fail the organizational test because your formation document does not dedicate your assets to an exempt purpose under Section 501(c)(3) as required in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

The majority of your activities are social and recreational in nature. Social and recreational events are not considered activities which further exempt purposes under Treas. Reg. Section 1.501(c)(3)-1(c)(1). As indicated in Rev. Rul. 77-366, extensive social and recreational activities precludes exemption under Section 501(c)(3) of the Code.

Your activities are not like those described in Rev. Rul. 78-84 where an organization promoted patriotism by conducting ceremonies in their community. You conduct minimal activities in your community. Your activities almost exclusively promote the social and recreational purposes of your members. Similar to Syrang Aero Club, Inc., you are organized and operated for the recreation of your members, precluding you from qualifying for exempt status under Section 501(c)(3) of the Code.

Like the organization in Better Business Bureau, you have a substantial non-exempt purpose. Even if some of your activities further exempt purposes under Section 501(c)(3) of the Code, such as an occasional fundraising event for charity, 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. Your recreational activities are substantial and prevent you from qualifying for exemption under Section 501(c)(3).

Conclusion

You are operated for substantial non-exempt, social and recreational purposes, with minimal benefit to the general public. You fail both the organizational and operational tests. Therefore, you do not qualify for exemption as an organization described in Section 501(c)(3) 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