



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **201737013**  
Release Date: 9/15/2017

Date: June 20, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-30, 501.35-00

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:**  
March 1, 2017  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

C = office  
D = organization  
G = program  
X = date  
Y = state

**UIL:**  
501.03-30  
501.35-00

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 stated below.

**Facts**

You were incorporated on X in the State of Y. Article 4 of your Articles of Incorporation states that you were organized:

Exclusively for charitable, educational, and professional, commercial, and trade association purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

You exist chiefly to support D, an organization exempt under Section 501(c)(6) of the Code. D is a group of business professionals appointed by the Secretary of Commerce, which works closely with the staff of the C, in Y, to assist U.S. businesses to export their products by connecting people, and by providing educational programs and other information services. With the exception of your Executive Secretary, who is the director of C, all members of D are also your members and are from the private sector.

You say that because you exist to support D, your exempt purposes are the same as D's – namely, to support U.S. businesses that export their products.

You were established for the specific purpose of assisting C with G, a one-time Department of Commerce sponsored conference. G will be funded from conference registration fees and conference sponsorships. You will collect these registration fees, pay the hotel where the conference will be held, and pay providers servicing the conference. This will further your purpose of educating businesses on marketing opportunities and connecting professionals exporting US goods and services. You will also split profits from G (if any remain) with C and D.

You provided a memorandum of agreement between C and D. The memorandum cites the above profit sharing agreement. However, the profit sharing portion states D is responsible for financial transactions, payments, registration fees, reimbursements, and any surplus will be divided 30% to D and 70% to C. While you stated that this memorandum was signed between you and C, you are not mentioned in the document. The purpose, venue and event date, joint activities, responsibilities, contacts and provisions of the memorandum all refer to D.

After G, you will consider other programs that will allow you to continue to assist D. You may award scholarships to students in international business programs whose primary interest is in the export of U.S. goods and services. You may present educational programs on topics related to the export of U.S. goods and services. These programs will generally be funded through registration fees and small company sponsorships. You indicated that you may occasionally distribute funds to D.

You state that you will only distribute profits to D and C on condition that both shall only use those funds in the pursuit of charitable, educational, and professional, commercial, and trade association purposes, consistent with your mission of promoting U.S. exports and of educating U.S. exporters.

You will not support or oppose candidates in political campaigns. You may encourage your members to contact their federal representatives on an issue of importance to U.S. exporters of goods and services. You and D will work with other entities, similar to D, around the country. You have not made an election to have your legislative activities measured by expenditures. You believe that the time spent on attempts to influence legislation will be less than 5% of the time spent on your activities and that costs will be zero because they will be accomplished by emails to your members.

#### **Law**

Section 501(c)(3) of the Code provides for the exemption from tax of organizations 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 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 (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states: In order to qualify under section 501(c)(3) of the 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.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) states: An organization is organized exclusively for one or more exempt purposes only if its articles of organization: (a) Limit the purposes of such organization to one or more exempt purposes; and (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) states that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in Section 501(c)(3) of the Code.

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 which accomplish one or more of such 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. 62-78, 1962-1 CB 86 states that organizations exempt from federal income tax under Section 501(c)(3) of the Code as described in Section 501(c)(3) may make distributions of income or other unrestricted funds to a state or municipality, or to an activity which is an integral part thereof, without jeopardizing their exempt status, provided such distributions are in furtherance of the exempt purposes of the donor organizations.

Rev. Rul. 68-489, 1968-2 C.B. 210 states that an organization will not jeopardize its exemption even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for Section 501(c)(3) purposes.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (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. The Petitioner's activities were largely animated by non-exempt purposes directed fundamentally to ends other than that of education.

#### **Application of law**

You do not meet the organizational test for exemption as set forth in Treas. Reg. Section 1.501(c)(3)-1(a)(1), because your articles of incorporation do not limit your purposes to one or more exempt purposes under Section 501(c)(3) of the Code and as defined in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Specifically, you do not meet the requirements under Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv), because the purposes stated in your articles are broader than the purposes specified in Section 501(c)(3), those being professional, commercial, and trade association purposes.

Although your articles indicate that your assets will be dedicated to purposes defined under Section 501(c)(3) of the Code, you have indicated that you will distribute a share of the profits from the event to D, exempt under Section 501(c)(6), and C, for "charitable, educational, and professional, commercial, and trade association purposes." You will provide a statement to them that the use of funds is restricted to promotional and educational purposes in support of the mutual mission to assist in the expansion of U.S. exports. Unlike the organizations in Rev. Rul. 62-78 and Rev. Rul. 68-489, these distributions lack the exercise of discretion and control as well as not being conditioned on use for public purposes. While restricting funds for charitable or educational purposes is qualifying under Section 501(c)(3), releasing funds that could potentially be used for promotional, professional, commercial or trade association purposes is not. An organization demonstrating lack

of control and discretion as to the use of its funds for Section 501(c)(3) purposes does not meet the qualification for exemption.

You do not meet the operational test for exemption under Section 501(c)(3) of the Code, as required by Treas. Reg. Section 1.501(c)(3)-1(a)(1), because you, like D, whose purposes you state are the same as yours, support commercial and trade entities that export their products. These activities more than insubstantially further purposes that are not exempt within the meaning of Section 501(c)(3). Consequently you do not meet the requirement of Treas. Reg. Section 1.501(c)(3)-1(c)(1) that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish exempt purposes specified in Section 501(c)(3).

You also fail to meet the operational test in that you are formed not to carry out activities exclusively furthering charitable or educational purposes but rather to carry out activities intended to be conducted by D. The memorandum of understanding was drafted for D, instructs D to carry out the functions of G, and instructs D to receive and pay for any fees associated with G. You will be operating in the place of D in conducting these same activities. Although you have proposed future activities that are educational or charitable in nature, such as your scholarship, and although parts of G will indeed be educational in nature, this does not overcome the substantial amount of non-exempt purposes present. As seen in Better Business Bureau of Washington, the presence of non-exempt purposes, if substantial, can destroy a claim to exemption regardless of other truly exempt purposes.

#### **Conclusion**

You are not described under Section 501(c)(3) of the Code because you are not operated exclusively for exempt purposes within the meaning of Section 501(c)(3). Likewise, you are not organized exclusively for purposes within the meaning of Section 501(c)(3).

#### **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](http://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