



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

Release Number: **201738012**  
Release Date: 9/22/2017

Date: JUNE 30, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 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 9, 2017  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

V = Date 1  
W = Date 2  
X = Date 3  
Y = Organization  
z dollars = dollar amount

**UIL:**  
501.03-00  
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 submitted Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on V, as a request for reinstatement of your exempt status. According to your application, you were automatically revoked for failure to file your required annual returns for three consecutive years.

Along with your Form 1023, you supplied a document dated W that provided some of the information necessary for a complete application. While it did not supply a specific attachment for Part IV of the application, a narrative description of your activities, it did indicate that you would operate in various foreign countries. These activities included: building an orphanage; digging wells for drinking water; ministering the word of God; Bible studies; computer classes; sports for children; financial fitness classes; family fitness classes; tutoring; and nutrition and health classes.

We obtained a copy of your organizing document, Articles of Incorporation, from the website of your state of incorporation and sent it to you along with a letter requesting additional information. We requested a detailed description of your past, present, and future activities; information about OFAC compliance; and that you amend your organizing document to meet the organizational test of Section 501(c)(3) of the Code.

According to your Articles of Incorporation, you were formed on X as a public benefit corporation. Your dissolution provision stated that, upon dissolution, assets would be distributed to Y. The document provided you an opportunity to adopt the IRS recommended language for distribution of assets upon dissolution to qualify for 501(c)(3) status; however, you opted to name a specific organization instead.

In your response to our information request letter, you indicated that your activities consist of collecting used clothing and school supplies, asking for a bid on the items and accepting the highest bids offered for the items. You then give a family donation of z dollars per year. You also stated that you would check the OFAC SDN List for names of individuals and entities with whom you are dealing and described your practices to ensure that foreign expenditures or grants are not diverted to support terrorism or other non-charitable activities. No response was provided about amending your organizing document to comply with the organizational test under Section 501(c)(3) of the Code.

After unsuccessful attempts were made to contact you by telephone, we sent you a second information request letter, again stating that you need to amend your organizing document, and asking for more information about the individuals to whom you distribute funds and/or goods.

We attempted to contact you prior to the due date of the second information request letter, and again after no reply was received by the due date. All attempts were unsuccessful.

#### **Law**

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

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)(4) holds 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, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or 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 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Revenue Ruling 57-449, 1957-2 C.B. 622 holds that a trust to pay a certain sum to all the individuals enrolled in a certain school on a particular date was held to be a private trust, not a charitable trust, because the beneficiaries were a group of identifiable individuals.

Revenue Procedure 2017-5, 2017-1 I.R.B. 2321, Section 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application.

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Cal. 1974), the court concluded that “one seeking a tax exemption has the burden of establishing his right to a tax-exempt status.”

Pius XII Academy v. Commissioner, T.C. Memo. 1982-97 provides that an organization must establish through the administrative record that it operates as an exempt organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met.

In La Verdad v. Commissioner, 82 T.C. 215 (1984), the administrative record did not demonstrate that the organization would operate exclusively in furtherance of an exempt purpose. Therefore, denial of organization’s request for tax-exempt status was reasonable.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), was an action for declaratory judgment that the petitioner brought to challenge the denial of his application for exempt status. The court, in finding that the actual purposes displayed in the administrative record supported the Service’s denial, stated “It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant.” The court noted that if the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. The court also highlighted the principle that exemptions from income tax are matters of legislative grace.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

### **Application of law**

A ruling on exempt status is based solely on facts and representations in the administrative file. You have not provided supporting documentation to establish you meet the requirements of Section 501(c)(3) of the Code. Section 501(c)(3) sets forth two main tests for qualification for exempt status. As stated in Treas. Reg. Section 1.501(c)(3)-1(a)(1), an organization must be both organized and operated exclusively for purposes described in Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds 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, for example, if, upon dissolution, such assets would, by reason of a provision in the organization’s articles or operation of law, be distributed for one or more exempt purposes.

Your organizing document provides that, upon dissolution, your assets will be distributed to a specific organization. As a result, you have not satisfied the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(4).

You did not provide sufficient detail that you meet the operational test under Section 501(c)(3) of the Code and are operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). You stated that you would give a family donation of z dollars per year, but provided no additional information as to whether or how the recipients comprised a charitable class. A charitable organization must be set up for the benefit of an indefinite class of individuals, not for specific persons. A corporation operating for the benefit of specific individuals is not charitable, even if the specific individuals in questions are in need of assistance. See Rev. Rul. 57-449. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

You have not submitted sufficient information establishing you are operated exclusively for 501(c)(3) purposes. (See Universal Life Church, Pius XII Academy, La Verdad, New Dynamics Foundation and Ohio Disability Association) You failed to provide details about the purpose of the funds you distribute, your recipient selection process, how you distribute funds, how you ensure the funds will be used for their intended purposes and whether board members or their relatives or members of the committee who select your recipients would be eligible to receive funds. Therefore, there is not sufficient documentation to establish that you are exempt from taxation as required by Section 501(c)(3) of the Code and Revenue Procedure 2017-5. As in Universal, you have the burden of establishing that you qualify for tax exemption.

In Pius, La Verdad, and New Dynamics, it was established that an organization must establish, through its administrative record, that it meets the requirements for exemption. Because you failed to provide sufficient details in your initial application and the additional documentation you provided did not meet the statutory and regulatory requirements for exemption, you have not established that you meet the requirements for exemption under Section 501(c)(3) of the Code. As provided in New Dynamics, any gaps in the administrative record will be resolved against the applicant. Similarly, in Ohio Disability Association, the court found that even when additional information was provided, but it contained generalizations and failed to clarify purposes, denial is justified. You did not provide supplemental information; therefore, we are unable to determine that you qualify for exemption.

### **Conclusion**

Based on the information submitted, you have failed to establish that you are organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code and the related income tax regulations. Therefore, based on the administrative record, you fail to qualify for exemption under 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  
Exempt Organizations  
P.O. Box 2508  
Cincinnati, OH 45201  
ATT: Carly Young  
Room 4525  
Group 7829

Street address for delivery service:

Internal Revenue Service  
Exempt Organizations  
550 Main St., Federal Bldg  
Cincinnati, OH 45202  
ATT: Carly Young  
Room 4525  
Group 7829

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,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892