



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

Release Number: 201742028  
Release Date: 10/20/2017  
UIL Code: 501.03-05  
501.03-30

Date: July 26, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

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*

cc:



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

**Date:** May 24, 2017

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

E = Borough  
X = Date  
Y = State  
v = Shares of Stock  
w dollars = Par Value of Stock

**UIL:**

501.03-05  
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 meet the organizational test under Treasury Regulation § 1.501(c)(3)-1(b)? No, for the reasons stated below.
- Do your governing documents allow the distribution of earnings to private shareholders or individuals in violation of Treas. Reg. § 1.501(c)(3)-1(c)(2)? Yes, as described below.
- Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts**

You were incorporated on date X in the State of Y. You incorporated under Y's for-profit corporation law. Article Second of your Certificate of Incorporation states, in part, you were formed to: "Engage in any lawful act or activity for which a corporation may be organized under the (state corporation law)

..."

Article Fourth states:

“The total number of shares which the corporation shall have the authority to issue is v shares of Common Stock, and the par value of each of such shares is w dollars.”

Your Certificate is silent as to the disposition of your assets upon dissolution.

Article VIII, Section 1 of your bylaws states, in part:

The corporation shall issue certificates for its shares when fully paid. Certificates of stock shall be issued in numerical order, and shall state the name of the record holder of the shares represented thereby; the number, designation, if any, and the class or series of shares represented thereby; and contain any statement or summary required by any applicable provision of the corporation's code.

Article VIII Section 2 of the Bylaws, states, in part:

Upon surrender to the secretary or transfer agent of the corporation of a certificate of shares ... it shall be the duty of the secretary of the corporation to issue a new certificate to the person entitled thereto, to cancel the old certificate, and to record the transaction upon the share register of the corporation.

Article VIII Section 3 of the Bylaws, states, in part:

The board of directors may fix a time in the future as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders or entitled to receive payment of any dividend or distribution, or any allotment of rights, or to exercise rights in respect to any other lawful action.

You state your activities will be to: “...serve the youth and families of the E area in arts and education of the African diaspora, culture, self and spiritual-awareness by offering classes in ballet, modern, jazz, tap, traditional dance, African Dance and African Percussion.”

You also indicate you have developed a performing ensemble out of your longstanding committed students which performs locally throughout E and neighboring areas for schools, churches, youth events, etc. The group also presents two dance productions per year at a local theatre in E.

You further indicated that in the future you want to expand to become a cultural arts center and to provide:

- A violence prevention initiative targeted to pre-school and elementary and children to teach children and families to love and work tighter to build their community through

the art of dance, cultural awareness workshops and college readiness services. You want to continue working with the children through age 21.

- A pre-professional program for children who want to have a professional career as a dancer or dance teacher.
- An After-school/Out-of-school-time programs for elementary through high school students providing homework assistance, tutoring, and dance classes.
- An extended summer dance camp for elementary through high school campers offering intensive dance classes, swim lessons, arts and crafts, nature, team building skills, and hiking.
- A Saturday arts program including arts and crafts, dance, drama, African percussion & choral vocal.
- Mental health prevention services.
- Education in the arts.

## Law

Section 501(a) of the Code exempts from federal income taxation organizations described in section 501(c).

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of corporations, and any community chest, fund, or foundation, organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual. Furthermore, section 501(c)(3) sets forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(a) states:

In order to be exempt as an organization described in section 501(c)(3), 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. § 1.501(c)(3)-1(b)(1)(i) provides that an organization will be regarded as “organized exclusively” for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and 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. § 1.501(c)(3)-1(b)(1)(ii) provides that an organization’s purposes as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3).

Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii) provides that an organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities that are not in furtherance of one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(b)(4) provides that 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 be distributed for one or more exempt purposes.

Treas. Reg. § 1.501(c)(3)-1(c)(2) states an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) lists the exempt purposes of section 501(c)(3) and includes such purposes such as charitable, educational, religious, etc.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) indicates that an organization is not organized or operated exclusively for one or more exempt purposes specified in section 501(c)(3) unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(2) states the term 'charitable' is to be used in section 501(c)(3) in its generally accepted legal sense and includes such terms as relief of the poor and distressed or underprivileged, advancement of religion and advancement of education.

Revenue Procedure 2017-5, 2017-1 I.R.B. 230, Section 6 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.

### **Application of law**

You do not meet the organizational test under Treas. Reg. § 1.501(c)(3)-1(b) because your Certificate of Incorporation does not limit your purposes to one or more exempt purposes under Treas. Reg. § 1.501(c)(3)-1(d)(1)(i). In addition, your purpose of engaging in any lawful act or activity for which a corporation may be organized under your state corporation law does not meet the requirements of Treas. Reg. § 1.501(c)(3)-1(b)(1)(iii) which states an organization is not organized for one or more purposes if its articles expressly empowers it to carry on activities that are not in furtherance of one or more exempt purposes.

Your purpose, as stated in your certificate, is much broader than the purposes state in section 501(c)(3) in contravention to Treas. Reg. § 1.501(c)(3)-1(b)(1)(ii).

You do not meet the provisions of Treas. Reg. § 1.501(c)(3)-1(b)(4) because your certificate is silent as to the dedication of assets should you dissolve.

Although your activities appear to further charitable activities under Treas. Reg. §§ 1.501(c)(3)-1(d)(1)(i) and 1.501(c)(3)-1(d)(2); your allowance of the distribution of earnings to private shareholders or individuals, as stated in your certificate and bylaws, prohibits exemption under Treas. Reg. § 1.501(c)(3)-1(c)(2).

You have not established that you are not organized or operated for the benefit of private interests such as your founder in contravention of Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

Since you meet neither the organizational test nor the operational test, you do not meet the requirements of Treas. Reg. 1.501(c)(3)-1(a) which requires you to be both organized and operated for one or more exempt purposes. Therefore, you are not exempt under section 501(c)(3).

Your governing documents do not show you meet the requirements of section 501(c)(3) and the regulations promulgated thereunder; therefore, under Rev. Proc. 2017-5, we cannot issue a favorable determination letter to you.

### **Conclusion**

Based on the facts presented, we conclude the following:

- You do not meet the organizational test under Treas. Reg. § 1.501(c)(3)-1(b).
- Your governing documents allow the distribution of earnings to private shareholders or individuals in violation of Treas. Reg. § 1.501(c)(3)-1(c)(2).
- You do not qualify for exemption under 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](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Steve Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892

cc: