



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

Release Number: **201746027**  
Release Date: 11/17/2017  
UIL Code: 501.05-01  
501.32-00

Date: August 21, 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)(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.

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 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: June 28, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date of formation

C = State

**UIL:**

501.05-01

501.32-00

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)(5) 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)(5) of the Code? No, for the reasons stated below.

**Facts**

You formed on B in the State of C as a for-profit corporation with stock. According to your Articles of Incorporation you are organized for any and all lawful business purposes.

Your activities consist of the following, including the percentage of time spent on each:

- Repair of commercial egg graders ( %)
- Sale of refurbished egg graders ( %)
- Sale of refurbished egg grader parts ( %)

You provide services to egg producers by fixing or supplying refurbished parts for their egg grading machines. The source of your revenue is egg grader repair and sales.

You have two board members and they are husband and wife. Your board members are also your shareholders. Your assets upon dissolution will be distributed 50/50 if dissolved by divorce and 100% to a surviving spouse. You make monthly distributions of profit to your shareholders.

**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(a) provides that the organizations contemplated by Section 501(c)(5) of the Code as entitled to exemption from income taxation are those which (1) have no net earnings inuring to the benefit of any member, and (2) have as their objects the betterment of the conditions of those engaged in such 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).

#### **Application of law**

You are formed as a for-profit corporation and you make regular distributions of profits to your shareholders, who are also your governing body members. Because you are a for-profit organization and your earnings inure to the private benefit of your shareholders, you do not qualify for exemption under Section 501(c)(5) of the Code.

You do not meet the requirements of Treas. Reg. Section 1.501(c)(5)-1(a) because your net earnings inure to the benefit of your board members and you are not bettering the conditions in agricultural pursuits; rather, you are providing a service for a fee.

You are similar to Rev. Rul. 66-105, because you sell merchandise and provide services for a fee, with the net proceeds being distributed to your governing body members. Like the organization described in Rev. Rul. 74-195, you do not better the conditions of those engaged in agricultural pursuits, improve their products or develop a higher degree of efficiency in their operations. Instead, you operate like an ordinary business. Accordingly, you do not qualify for exemption under Section 501(c)(5) of the Code.

#### **Conclusion**

Based on the information provided we conclude that you are not operated as an exempt organization described in Section 501(c)(5) of the Code. You are formed as a for-profit business and you provide services for a fee in a manner which inures to the benefit of your governing body. 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](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,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892