



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: October 26, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201803009**
Release Date: 1/19/2018

UIL: 501.03-00, 501.33-00, 501.36-01

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*



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date: August 29, 2017

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

D = Organization

E = State Statute

F = Organization

G = Name

UIL:

501.03-00

501.33-00

501.36-01

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 B in C. Your Articles state you are a charitable or religious corporation as defined in E. They also state that in the event you dissolve or terminate at any time, your assets become the sole property of D. You believe you are exempt under Section 501(c)(10) of the Code but our records show you are exempt under Section 501(c)(7) of the Code as of B. You are current with all Form 990 filings. You submitted Form 1023 to change your status to be recognized as exempt under Section 501(c)(3) of the Code.

Your mission is to support and supplement the charitable works of D and to facilitate the fraternal, civic and social pursuits of F. You are a membership organization. Your Bylaws state in Article III that your members are all members of F that are in good standing. Your bylaws additionally indicate that your members elect your board of directors.

Your primary activity is the operation of a banquet center doing business as G. The banquet center is rented to the general public for such events as weddings, events associated with weddings including rehearsal dinners, showers, luncheons, parties, and business events. The facility can be configured to the needs of the clients including a classroom, and a theater. You offer numerous packages that can be tailored to the clients and the

pricing will vary greatly from client to client per each person's individual needs for their event. Catering is also available through your preferred caterers to all clients.

You offer several wedding packages which can be customized according to the client's wishes. You have basic rates and charge additional fees for drink packages and other amenities such as the use of your patio and the lounge as well as specialty glassware and specialty beverages.

For your business events, you offer customized seating styles and can accommodate a few hundred. These packages may include meeting room, tables, chairs, and wireless internet and are generally offered in half day and full day increments. These clients can also pay an additional fee for audio video services and other amenities.

You publicize G primarily on your web site which contains details of the numerous available event packages and fee schedules. The website enables potential clients to download detailed brochures on the various packages you offer for such events as weddings, business meetings and parties and the fee schedules. Your website also has photos of the various available amenities and emphasizes the amenities are offered at an affordable price. To emphasize your customer service, the website solicits testimonials from satisfied clients emphasizing the pricing and services offered.

You have a salaried full time banquet facility operations manager who is responsible for G's day to day operations. The duties consist of contracting with clients for rental of the facility, reporting to your board of directors and advising the board of all maintenance needs, and making recommendations for improvements the facility may need. In addition to the base pay, the operations manager may receive a monthly commission based on the monthly invoicing of hall rental revenue. You wrote this percentage considers the modest level of base pay compensation and adds an incentive component to the compensation package. In addition, upon the review of overall financial results, your board at its discretion may provide another annual bonus in the range of 2-3% of total compensation. Your income statement also shows you hire independent contractors and members are encouraged to volunteer at G to keep costs down. Ninety nine percent of your income came from fees earned from G's operations. Expenses were for its operating expenses such as salaries (30% of your expenses), interest expense (19% of your expenses), advertising (3% of your expenses) and cost of sales (15% of your expenses). Charitable contributions were .1% of your expenditures.

You also indicated your facility is debt financed. Finally, your other activity is a weekly bingo game which is conducted by your volunteer member bingo committee. Your financial information shows you have only conducted this activity for one year.

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.

Treasury Regulation Section 1.501(c)(3)-1(e)(1) states an organization may qualify for tax exemption under Section 501(c)(3) of the Code although it operates a trade or business as a substantial part of its activities,

1. if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes
2. and also if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in Section 513 of the Code.

Rev. Rul. 64-182, 1964-1 C.B. 186 - A corporation organized exclusively for charitable purposes derives its income principally from the rental of space in a large commercial office building which it owns, maintains and operates. The charitable purposes of the corporation are carried out by aiding other charitable organizations, selected in the discretion of its governing body, through contributions and grants to such organizations for charitable purposes. Held, the corporation is deemed to meet the primary purpose test of section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations, and to be entitled to exemption from federal income tax as a corporation organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954, where it is shown to be carrying on through such contributions and grants a charitable program commensurate in scope with its financial resources.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected

costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Schoger Found. v. Comm'r, 76 T.C. 380 (T.C. 1981), the court held that a not-for-profit corporation that owned and operated a mountain lodge as a religious retreat facility and made available to lodgers recreational and social activities comparable to activities offered by vacation resorts does not qualify for tax-exempt status as an organization described under section 501(c)(3) of the Code.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F.2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health-related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

Application of law

You are not operated for exempt purposes consistent with Section 501(c)(3) of the Code. Your activities consist of operating a commercial banquet center. You operate in a manner consistent and in competition with other banquet centers.

You do not meet the provisions stated in Treas. Reg. Section 1.501(c)(3)-1(b)(4) because your assets upon dissolution are dedicated to a specifically named entity which does not guarantee that they will be distributed for one or more exempt purposes described in Section 501(c)(3) of the Code.

You are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). Your primary activity is the operation of a banquet center available for a fee to the general public. Rental fees are paid by anyone using it. As provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), you have not established that your operations accomplish exclusively charitable purposes.

Operating as a banquet center for a fee on a regular and continuous basis is an unrelated trade or business for profit within the meaning of Section 513 of the Code. Pursuant to Treas. Reg. Section 1.501(c)(3)-1(e)(1), you do not meet the requirements for recognition of tax exemption under Section 501(c)(3) of the Code as your primary purpose is the operation of an unrelated trade or business for profit within the meaning of Section 513 of the Code.

Unlike the organization in Rev. Rul. 64-182 you do not restrict the rental of your banquet center to other section 501(c)(3) exempt organizations. Maintaining and renting a banquet center to members of the general public does not further a recognized Section 501(c)(3) purpose. While you have made charitable contributions, this has been less than 1% of your total revenue. In addition, your primary activity would remain the operation of a banquet center for rent by the general public. As the court found in Better Business Bureau of Washington, D.C. v. U.S., the presence of a single, substantial non-exempt purpose will preclude exemption regardless of the number of other exempt activities.

Your operations are like those of the organization described in Arlie Foundation, Inc. As the owner and operator of a banquet center, you are in direct competition with other banquet centers who provide services to members of the public for a fee. The fees you charge are customary to those of the industry. In addition, you will advertise your services on the internet and use marketing methods common to for-profit businesses. You have received less than 1% of your total revenue from public donations or grants and are almost solely funded by fees. You have a paid banquet manager and contract labor as needed. Thus, you meet most of the factors provided in Airlie Foundation, Inc., indicating that you are operated for a substantial nonexempt commercial purpose.

You are like the organizations described in B.S.W. Group, Inc., Easter House, Schoger Foundation and Living Faith because you are operating for a substantial nonexempt commercial purpose rather than for a tax-exempt purpose. You are open to the general public during regular business hours and the rental of the banquet center is available to anyone in the general public. You use your rental income to pay for the cost of sales, the upkeep of your facility, the employment of staff, and the making of interest payments on debt. This is an activity normally carried on by for-profit businesses. Therefore, you conduct the activity in a manner similar to for profit businesses and are in direct competition with such businesses.

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
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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892