



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201808020**  
Release Date: 2/23/2018

Date:  
November 28, 2017  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

**UIL: 501.35-00, 501.36-00**

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:**  
September 11, 2017  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

X = State  
Y = Date of formation

**UIL:**

501.35-00  
501.36-00

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 in X on Y. You formed to restore a hotel located near your community's historical business district. You have purchased the building and are now fundraising to make the appropriate renovations.

Your renovation plan calls for the restoration of the entire hotel, which currently consists of twenty hotel rooms. After the renovation, it will consist of ten hotel rooms, each with a private bath, a dining room which will seat up to 100 people, and a kitchen, all with handicap accessibility. The plan may also include a coffee shop, wine cellar, and spa. The hotel will have themed décor to preserve the heritage of the area. The hotel is not located in a blighted area.

The hotel came up for sale when the owner could not afford to replace the old heating system. The building is currently vacant and in a state of disrepair. You plan on hiring architectural engineers, an HVAC contractor and a plumber to help with the major projects. You are working to keep the hotel as historic as possible while adding up-to-date technology for your guests' comfort. After the project is complete, you will hire a manager for the day-to-day business operations. The board will continue oversight. Any income will be put back into the hotel.

You said your goal is to make the hotel a destination for travelers looking for a unique experience. You hope to promote economic growth for businesses, provide a meeting place for groups and organizations, and provide the community with a place to hold their special events.

Once the hotel is restored you intend that it will be self-sustaining. You said it's possible that local businesses, civic or service organizations may use the facility for meetings, luncheons, etc., but will pay the standard

commercial fees if they are not a charitable organization recognized as exempt under Section 501(c)(3) of the Code. Rates will be given "at cost" for Section 501(c)(3) and/or governmental entities. The fees will be determined by the cost of operating, such as dishes, linens, and housekeeping needs.

When asked about future activities, you stated that upon completion of the rehabilitation, your facility will provide hotel services, as well as food and beverage services, to guests and visitors, or the general public. You anticipate that the operation of the hotel and hospitality business will be conducted by an unrelated party who will lease the facilities from you. You said your preliminary plans are to consider transferring ownership of the real estate to a partnership which will own and rehabilitate the historic structure property into a hotel comparable to its original condition and design. Subsequently, the partnership may lease the property to a qualified hotel management company to oversee the hotel operations, marketing, and administrative functions of hotel management.

Educational information will be on display to convey the historic relevance of the facility. The facility will be available for the public to visit, observe, and use for educational, civic and community events and activities.

Although your facility is located near a district which is listed on the National Historic Register, it has no such designation. Your facility has been visited by a local historian which you say is the first step to be recognized by the State of X for their Historic Register, but to date it has not been granted any historical designation.

The estimated budgets you provided for the next few years include revenue from gifts, grants, donations and fundraising. However, you said that no donated funds will be solicited once renovation is complete. You said the hotel will be self-sustaining. All estimated expenses for the next few years are related to the renovation of the hotel and fundraising.

#### **Law**

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, where no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, 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 Section 501(c)(3). If an organization fails to meet either the organizational or operational test, it is not exempt.

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. 75-470, 1975-2 C.B. 207, found that a nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical or architectural significance and to open the structures for viewing by the general public qualifies for exemption under Section 501(c)(3) of the Code. The organization consults with governmental agencies and local historical societies to locate those structures which are deserving of restoration and preservation. After a building is restored, the organization opens it to the general public. Its operations are

financed from admission fees to the restored buildings, and from contributions from the public. The subject organization's activities consist of acquiring, restoring, and preserving historically and/or architecturally significant buildings and making such restored buildings available for public viewing. In this manner, the organization is carrying on activities similar to those of a museum and is educational and charitable within the meaning of Section 501(c)(3).

Rev. Rul. 86-49, 1986-1 C.B. 243, recognized that preserving the historic or architectural character of a community through acquiring and occasionally restoring historically or architecturally significant properties could serve to prevent community deterioration. The ruling went on to note that factors that show the historical significance of a building or structure include those that are (1) are closely associated with significant events or developments in American history; or (2) are closely associated with the lives of significant American historical figures; or, (3) embody distinctive characteristics of a type, period, or method of construction, or that represent the works of a master, or that possess high artistic value; and are either: (a) listed in the National Register of Historic Places; or, (b) located in a registered historic district and are certified by the Secretary of the Interior as being of historic significance to the district. Additionally, the continued preservation of such properties after their sale by the organization is guaranteed by means of restrictive covenants that are reasonably suited to preserving the historic or architectural character of the structures and community involved.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of any nonexempt purposes, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under Section 501(c)(3) 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, nor scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 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 Airlie Foundation v. I.R.S., 283 F. Supp. 2d 58 (D.D.C. 2003), the court found that the organization was formed principally to organize, host, conduct and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with several commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a few charitable and educational activities, these were incidental to its primary activities of operating a commercial conference center.

### **Application of law**

You are not operated exclusively for purposes that are exempt under Section 501(c)(3) of the Code as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). The hotel you intend to restore is not officially classified as historical and is not located in a blighted area. Even if the hotel were classified as historical, the manner in which you

propose to operate the hotel after the restoration does not exclusively further exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1); rather, this is a substantial nonexempt activity.

Unlike the organization described in Rev. Rul. 75-470, you are not restoring historical properties and making them available to the public in a manner like a museum. Rather, you are planning to renovate and then operate a hotel with related services, such as food, beverage and spa services, to the general public, similar to any other hotel.

Rev. Rul. 86-49 provides clarification on the factors that demonstrate how “historical” is determined. You do not have any of the historical characteristics described in this ruling. Even if you did, only the initial portion of your activities involve the renovation of a building. Your substantial post-renovation hotel activities are not exclusively charitable or educational in nature, precluding you from exemption under Section 501(c)(3) of the Code.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under Section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature, as noted in Better Business Bureau of Washington, D.C., Inc. In the same way, your substantial nonexempt purpose of operating a hotel precludes your claim of tax exempt status.

Like the organization described in B.S.W. Group, Inc., you intend to operate the restored hotel in a manner so that it is self-sustaining. You do not intend to solicit donations or voluntary contributions after the renovations are complete. You plan to lease the hotel to a management company or form a partnership to handle the hotel operations. Similar to Airlie Foundation, although you do plan on having a few incidental charitable and educational activities, your primary activity is operating a hotel in a manner nearly identical to and in competition with other for-profit hotels. Your primary activities are not exempt under Section 501(c)(3) of the Code, precluding you from exemption.

### **Conclusion**

You are formed to renovate a hotel that is not designated as historical and not located in a blighted area. You intend to operate it in a manner similar to a for-profit hotel after renovations have been completed. Any charitable or educational purposes you have are incidental to your substantial non-exempt purposes. Therefore, you are not operated exclusively for exempt purposes and 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.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892