



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **201831013**  
Release Date: 8/3/2018

Date:  
May 9, 2018  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

**UIL: 501.03-00, 501.03-18, 501.32-00, 501.33-00**

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:  
March 6, 2018  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

P = State  
Q = Date of formation  
R = Individual  
S = Individual  
T = Individual  
u dollars = Amount  
w dollars = Amount

**UIL:**

501.03-00  
501.03-18  
501.32-00  
501.33-00

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 described below.

**Facts**

You incorporated in the state of P on date Q. The filed copy of your Articles of Incorporation indicates that your purpose is to engage in any lawful activity for which corporations may be incorporated in the state. Your Articles do not contain a dissolution clause.

You provide a permanent home and sanctuary to previously ill, abused, and/or neglected animals. The animals come from other animal sanctuaries, rescues, and/or from individuals in the community. You feed, house, and provide veterinary care to the animals with the assistance of volunteers and paid independent contractors. You plan to provide education to the public on the proper feeding, housing, and nurturing of animals.

You were founded by R and S, husband and wife. R is the President, Treasurer and primary caretaker of the animals. The animals live in the home of R and S. R will be compensated u dollars per year for his duties, adjusted annually. S is the secretary. T is listed as your chief veterinarian. There are no other members of your governing body.

You stated that R is the legal guardian of the animals. You obtain the animals from various organizations, such as the local animal shelter and rescue organizations. You pay any related adoption fees for the animals. You favor animals that require the most care, whether they have physical or psychological needs or are of difficult species, and which would be too much for the average individual to care for adequately.

You provided a copy of your conflict of interest policy, which states in part that, after disclosure of any financial interest in a contemplated business transaction and all material facts, all interested persons shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. An interested person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

The facility you lease is a residential home owned by R and S. The monthly rent is equal to the home's monthly mortgage payment. R and S will continue to reside at the facility. The lease agreement states that you will lease a three bedroom, one bathroom house on a month-to-month tenancy. R signed the agreement as both the landlord and the tenant. You listed a mortgage payable of w dollars on your Balance Sheet.

Your occupancy expenses also include the monthly payment on a vehicle owned by R and S, as well as various utilities. You provided details about the other expenses you intend to pay, which include: supplies, food, and other associated costs; veterinary care; adoption fees; and the purchase of new enclosures.

You plan to subsidize your mission through donations, grants, and the sale of merchandise. You will advertise through your website, presentations to local groups, mail, brochures, newspaper articles and other charities. All income generated or granted to you will go specifically toward paying for the care of your animals, the upkeep of the facility, and to pay your independent consultants working at the facility.

In the future, you wish to expand your facilities to include a much larger space for the animals, larger and better crafted enclosures, and to provide care for a larger variety of animals, including often neglected farm animals.

You provided copies of your meeting minutes. Your first meeting consisted of an announcement of filing Articles of Incorporation, a discussion of the duties and responsibilities as a board, future volunteers and volunteer opportunities, and your future goals. At your second meeting, you discussed new additions of animals, progress of current animals, review of and suggestions for improving your website. The minutes did not include any discussion of entering a lease with interested persons, making the car payments of your officers privately owned vehicles, or the payment of utilities at the residence. There was also no mention of any discussion of, or voting on, the compensation of your President or how you followed your conflict of interest policy with respect to any of these contemplated transactions.

Your website features pictures of some of your animals and information about your Board of Directors. You provide a means by which interested persons can contact you to request a visit. Visits to the sanctuary are allowed by appointment only. You request that individuals not contact you about re-homing; you are purely a sanctuary, and not a rescue. You will not accept animals without prior arrangements, nor do you re-home the animals currently living with you. None of the animals are available for adoption; the sanctuary is their forever home. You do not pick up or care for stray or injured animals; you recommend contacting the local animal control or humane society. Donations are not accepted at this time because non-profit status is pending. You will gladly take volunteers.

## 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) provides 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)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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(c)(2) provides that 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. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 67-292, 1967-2 C.B. 184, provides that an organization formed for the purpose of developing a sanctuary for wild birds and animals for the education of the public may be exempt as an educational organization. The organization was formed to purchase and maintain a large tract of forest land to be reserved as a sanctuary for wild birds and animals and to be open to the public for educational purposes. A sanctuary for wild birds and animals to be used for public educational purposes is an organization similar to a museum or zoo. Therefore, the activities of this organization are educational in that they instruct the public on subjects useful to the individual and beneficial to the community.

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 a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F2d. 344 (4th Cir. 1973) cert. denied, 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), the organization's founder and his wife executed vows of poverty and transferred all their possessions and income to the organization on the condition that it qualified under Section 501(c)(3) of the Code. Financial control by the founder created an opportunity for abuse. The court found that a substantial purpose of the organization was to serve the private interests of the founder and his wife. Accordingly, the court held that the organization did not qualify under Section 501(c)(3).

In Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), it was held that if an activity serves a substantial non-exempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose.

### **Application of law**

As explained in Treas. Reg. Section 1.501(c)(3)-1(a)(1), to be exempt as an organization described in Section 501(c)(3) of the Code, you must be both organized and operated exclusively for one or more of the purposes specified in such section. Because you are neither organized nor operated exclusively for exempt purposes, you are not exempt.

### *Organizational Test*

Your Articles of Incorporation do not include a clause limiting your purposes to one or more exempt purposes. Additionally, your Articles do not include a dissolution clause. As stated in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4), to demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose and dissolution clause. You do not have a proper purpose or dissolution clause; therefore, you are not organized for exempt purposes as described in Section 501(c)(3) of the Code.

### *Operational Test*

You do not meet the operational test of Section 501(c)(3) of the Code because you are not operating exclusively for charitable purposes as required under Treas. Reg. Section 1.501(c)(3)-1(c)(1). 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. You are paying the personal bills of your founders, including their house, utilities and car payments while they continue to live in their house with their animals. Your earnings inure to the benefit of your founders more than incidentally, as described in Treas. Reg. Section 501(c)(3)-1(c)(2), which precludes you from exemption under Section 501(c)(3).

You do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) because you are not operating exclusively for public purposes; rather, you are operated for the substantial private benefit of your founders. You pay rent monthly to R and S equal to their monthly mortgage payment while they continue to reside at the house they are leasing to you. Although some educational activities may occur at the premises, R and S benefit more than incidentally from the payment of their bills. Although your proportional usage of the officers' personal vehicles was not established, you will be making their monthly car payment while they have full use of these vehicles for their personal needs. As with the house, these vehicles could be sold, and the proceeds would revert to the officers. Your rent and related utility payments, as well as the car payments, constitute inurement to your officers, which precludes exemption under Section 501(c)(3) of the Code.

You plan to develop a sanctuary for birds and other animals but, unlike Rev. Rul. 67-292, you are not operating exclusively for educational purposes. The facilities out of which you operate are not accessible to the general public similar to a museum or a zoo.

You are like the organizations described in Better Business Bureau and Old Dominion Box Co. Although operating an animal sanctuary may be exempt purpose under Section 501(c)(3) of the Code, you primarily benefit your founders. Your operations result in benefit to private parties more than incidentally and constitute a substantial non-exempt purpose.

You have no operational or financial controls in place. Furthermore, you have a small, related board and your founders have control over your daily operations and finances. Like the organization in Basic Bible Church, your small related board has provided an opportunity for abuse and your earnings inure to the benefit of your founders, precluding you from exemption.

As explained in Schoger Foundation, if an activity serves a substantial non-exempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose. You are not open to the public, you do not take in stray or unwanted animals nor do you attempt to find homes for stray or unwanted animals. You serve a substantial non-exempt, private purpose of benefitting your founders while only incidentally benefitting stray or unwanted animals.

### **Your position**

You provided additional information to demonstrate how you benefit the public. These include:

- One of your volunteers is studying veterinary science and her time is spent learning about the animals through direct interaction, sharing of personal experiences, and joining you on your trips to the vet. Additionally, the veterinarian who is part of your Board has offered to allow her to spend time at the veterinary hospital to assist in her studies and future career.
- Your social media site and website contain encouraging photos and videos of the animals as they rehabilitate, as a way of demonstrating what it possible to achieve through proper care and responsibility. The sites include care tips, healthy recipes and other information to help guardians of animals make the best choices for their animals.
- Possible educational demonstrations with the local public library, with the aim of improving the knowledge of the community. You will also partner with additional businesses for similar activities.
- Allowing visitors at your facility during pre-established hours and with appointments, along with unexpected visits when people see you outside with the animals. Through these interactions, you educate people about the care and responsibilities that go into being a guardian to an animal. Visitors interact with the animals and learn about their needs first-hand.
- Over time, grow to become a comprehensive knowledge resource for the raising and rehabilitating of a wide variety of animals. All information will be publicly available with the hopes of raising awareness and education.
- Partner with the local high school veterinary science classes to allow students to interact with a variety of different animals. This would allow them to gain experiences they wouldn't otherwise have and provide them with a better future.

### **Our response to your position**

Even if an organization has many activities that further exempt purposes, exemption may be precluded if it serves a substantial private interest. You are neither organized nor operated exclusively for exempt purposes. You serve the substantial private interests of your founders, which results in inurement, and only incidentally serve public interests.

### **Conclusion**

Based on the information submitted, you are not organized or operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. You are not operating exclusively for exempt purposes and your earnings inure to the benefit of insiders. Accordingly, we conclude you do not 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](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