



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201832019**
Release Date: 8/10/2018
UIL Code: 501.03-30
501.32-00
501.33-00

Date:
May 15, 2018
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.

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 8, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = Date of formation
Y = State of formation
Z = Name of individual

UIL:
501.03-30
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)(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 formed as a domestic professional service limited liability company by filing Articles of Organization on X in the state of Y. You were formed to provide affordable professional veterinarian services and find homes for abandoned animals. Your sole member is Z, an individual.

Your Operating Agreement calls for the sole member to share in your net gains and losses. Upon dissolution, after all debts are paid, any remaining funds or assets will be distributed to Z, the sole member. Your governing body consists of Z and Z's assistant, both of whom are compensated.

Your veterinary services include physical examinations, vaccinations, medication and/or surgeries when needed. Eventually, abandoned pets will also be taken in, medical needs met and permanent homes found. Any member of the public can use your services. Your revenue comes from fees for services. You charge market rates for all services and have recently slightly increased prices due to low clientele. You do not offer fee reductions or waivers. However, discounts are provided to customers who purchase multiple services or have multiple animals treated.

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 Regulations Section 1.501(c)(3)-1(a)(1) states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or 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 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 that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) states an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes 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 69-266, 1969-1 CB 151, concerns an organization formed and controlled by a doctor of medicine. The organization "hired" the doctor to conduct research programs consisting of examining and treating patients, charging the prevailing fees for services rendered. The organization was found not to be exempt under section 501(c)(3) of the Code.

Rev. Rul. 74-194, 1974-1 C.B.130, describes an organization formed to prevent cruelty to unwanted animals by preventing the overbreeding of cats and dogs. The organization advocated the spaying or neutering of the mixed-breed dog and cat, and raised funds to aid pet-owners who desired to spay or neuter their pets but who could not afford the rates charged by veterinarians to perform the operations. There is no relationship between any member of the organization and the veterinarians who performed the operations. The organization was found to be engaged in the prevention of cruelty to animals and accordingly, qualified for exemption from federal income tax under section 501(c)(3) of the Code.

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 the exemption regardless of the number or importance of truly exempt purposes.

In Easter House v. U.S., 12 Ct. Cl. 476 (1987), aff'd. 846 F. 2d 78 (Fed. Cir 1988), the court concluded that adoption services were the primary activity of the organization. In deciding that the adoption services were conducted for a business purpose rather for a charitable purpose, the court considered the manner in which the organization operated. The court determined that the organization competed with commercial organizations providing similar services; fees were the only source of revenue; it accumulated very substantial profits, because it set its fees in order to generate a profit; the accumulated capital was substantially greater than the amounts spent on charitable and educational activity; and the organization did not solicit and did not plan to solicit contributions. The court also found a corporate-type structure in the classes of memberships (including a single life member), and dependence on paid employees. The court found that the organization was not exempt under section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation providing counseling 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 for profit. The corporation's primary purpose was not charitable, educational or scientific, but rather commercial in nature. Further, the court found that the organization's financing did not resemble that of a typical 501(c)(3) organization as it had not solicited, nor had it received voluntary contributions from the public. Its only source of income was from the fees for services that it collected. Those fees were set high enough to recover all projected costs and produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." Additionally, the corporation did not limit its clientele to organizations that were exempt under section 501(c)(3).

Application of law

You meet neither the organizational nor the operational test of Treas. Reg. Section 1.501(c)(3)-1(a)(1).

Contrary to Section 501(c)(3) of the Code, your net earnings inure to the benefit of your sole member Z. Z not only collects a salary, but has an interest in all your profits and a right to your assets in the event of your dissolution.

The purposes for which you are organized, providing affordable professional veterinary services and finding homes for abandoned animals are not, without further qualification, exempt purposes falling under Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). Furthermore, you are an organization of the kind described in Treas. Reg. Section 1.501(c)(3)-1(b)(4), whose organizing document provides for the distribution, upon dissolution, of its assets to its members or shareholders.

You are not operated exclusively for an exempt purpose because, contrary to Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), you serve a private interest, being operated for the benefit of your sole member Z.

Like the organization denied exemption in Rev. Rul. 69-266, you are formed and controlled by an employee, charging prevailing prices for his services, in a purely commercial manner without a donative element. Both Easter House and B.S.W Group, note characteristics that demonstrate commercial operations. Among these are competitive pricing of services, fees as the only source of revenue, setting fees to generate a profit, no evidence of charging fees below cost and the lack of solicitation of donations. You exhibit all of these characteristics. Hence, you are operating in a commercial rather than an exempt manner.

You do not resemble the organization granted exemption in Rev. Rul. 74-194. While you pay the fees of unrelated veterinarians for their spaying and neutering services, you charge prevailing prices without reductions or waivers just as a for-profit veterinarian would do.

Finally, as noted in Better Business Bureau of Washington D.C., the presence of a single but substantial non-exempt purpose precludes exemption under Section 501(c)(3) of the Code. All the above noted factors demonstrate that you operate for a substantial non-exempt purpose.

Conclusion

You are organized to provide a private benefit to Z in the form of compensation and sharing of earnings. You operate in a manner that is indistinguishable from a commercial operation. Thus, you are organized and

operated for non-exempt purposes and do not meet the organizational and operational tests required for exemption under section 501(c)(3) of the Code. Therefore, you are not exempt under this section and donations to you are not deductible.

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