



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Number: **201835006**
Release Date: 8/31/2018

Date:
June 6, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.03-00, 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:
April 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

X = Date
Y = Date
Z = State

UIL:

501.03-30
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 meet the organizational test under Section 501(c)(3) of the Code? No, for the reasons stated below.
- Do you meet the operational test under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You submitted Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, on date X.

You attest that you were incorporated on Y, in the state of Z. You attest that you have the necessary organizing document, that your organizing document limits your purposes to one or more exempt purposes within the meaning of Section 501(c)(3), that your organizing document does not expressly empower you to engage in activities, other than an insubstantial part, that are not in furtherance of one or more exempt purposes, and that your organizing document contains the dissolution provision required under Section 501(c)(3).

You later submitted a filed copy of your Articles of Incorporation from the state of Z which confirms that you were formed on Y. However, it shows that you were formed as a mutual benefit corporation. In addition, your Articles of Incorporation are silent regarding your purpose. Your Articles state that in the event of dissolution, your residual assets will be distributed to your members prorated in accordance with their respective membership interests.

With your initial application, you also attested that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially
- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

During review of your Form 1023-EZ, detailed information regarding your activities was requested supplemental to the above attestations.

Your purpose is to operate a cattle farm. This will include the buying, breeding, and selling of angus beef cattle. You will use the meat from the cattle to donate to different food banks and support school lunch programs in the community. You also will use the farm to provide training on how to operate and repair farm equipment, and programs that will educate the public on the care of farm animals such as feeding, shelter, breeding, etc.

We asked for a detailed description of your activities, including the breakdown of the amount of time and funds you spend on each. You provided some vague generalities and your mission statement. You also provided a chart which indicated your strengths, which include:

- strong healthy cattle
- a well-organized farm
- family owned and operated
- good breeding and future sales for farm, and
- debt free.

Your opportunities for the future include growing, cutting and baling your own hay and growing your own vegetable garden. You may expand with pigs and horses. You want to reach your goal of 300 head of cattle.

You provided a three-year plan. In your first year, you will start operations. During the second year you will have the program open and operational. Then in your third year you plan to start selling cattle. You say you are not just here for yourselves, you are here to help others and local schools. You will donate meats cut by a butcher so that the food bank can give families clean cuts of meat. Any revenue from sales will be used to improve the farm, replace cattle and help pay for expenses. Your surplus revenue will be used to further your purpose or mission.

When asked for more detail, you said no land or cattle has been purchased and you did not indicate how large of a farm you plan to purchase. When you do obtain a farm, you will use the farm land and equipment "for farm use only, buying and selling and raising cattle, some for donating for local food banks." Some of the sales will

go to help local schools with school supplies. No one will own the farm and it will be operated by volunteers. However, you have stated that if the farm does come equipped with a home then someone will live there to assist in caring for the farm. You will own all cattle and equipment. If any equipment needs to be leased, it will be leased from local companies.

You said that 100% of your time will be spent on buying, breeding and selling cattle. But in the same response you also said you will spend half of your time tending to the cattle and the farm, about a fourth of your time will be spent checking on client's needs, another fourth will be spent taking care of day to day administrative items and a negligible amount of time buying and/or selling cattle. It is not clear who your clients are or how you will be assisting them, as you provided no further detail. You said the educational activities may take two to four years to get the programs up and running.

Your proposed budgets indicate that all your income will come from the sale of cattle. Despite our request for same, you have not provided any detail regarding how the cattle will be sold or who will be the potential buyers of your cattle. There is no indication that you plan to receive donations from the public. You state that any income received will go toward the operation and maintenance of the farm and that any surplus revenue would go toward other local charitable efforts, but those charitable efforts would not begin for another two to four years. Your financial data included shareholders' equity, which would imply that there is, or will be, individual ownership of the farm.

You also did not indicate whether cattle would be sold above, below or at cost, despite our request for this information. Rather, you stated that you will use prices from a particular website to determine the sales price. You also did not indicate whether the butcher you plan to use will be volunteering their services or how they will be affiliated with you.

We sent to you prints from the internet showing that there is already a farm with your name at the address provided on your application. To this you responded as follows:

IRS sees that there is an on [sic] open farm with the current name [your name] that is assessed with land and understand that [you] will not be owned by any members and request an under standing [sic] of there [sic] search (No [sic] information or pages were attached to IRS Request Letter and as noted the Assessor will generate a report on behalf of the request for IRS Page 3 Question 4 with no liability to IRS Nor [you] for Incorrect Information that was intended to be sent.

You assert that you are different than a for-profit cattle farm because after all expenses have been planned, you will help families in need with bills, gas for transportation, education needs, emergency heat costs, as well as providing other assistance. You are unlike a for-profit farm because you "are looking to improve people's lives and support our children with clothing and paid lunch programs for those who do not qualify for the free lunch program and for the parents that have a difficulty [sic] paying for their kids [sic] lunch." You said there are many ways to choose from to support the public.

Law

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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 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 an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

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 that accomplish one or more of such exempt purposes specified in Section 501(c)(3). 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)(1)(ii) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In Revenue Ruling 73-127, 1973-1 CB 221, it was found that a nonprofit organization that operated a cut-price retail grocery outlet and allocates a small portion of its earnings to provide on-the-job training to hard core unemployed does not qualify for exemption under Section 501(c)(3). The store operated in a similar manner to profit-making businesses in the area, and its gross earnings are used to principally pay salaries and other customary operating expenses incurred in the operation of a grocery store and to expand the operations of the store. It was concluded that the operation of the store and operation of the training program were two distinct purposes sought to be accomplished by the organization through its use of resources. Since the commercial operation of a grocery store is not a recognized exempt purpose and this activity was substantial and conducted on a scale larger than reasonably necessary to conduct the training program, the organization was found not to be exempt.

In Better Business Bureau of Washington, D.C., Inc v. United States, 326 U. S. 279 (1945), states that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Arlie Foundation, Inc. v. U.S., 283F. Supp. 2d 58 (D. D.C., 2003), the organization operated a conference facility made available primarily to exempt organizations and governmental units. It was found that even though the organization argued that serving non-profit and governmental clients is indicative of an exempt purpose, the organization was found not to be exempt under Section 501(c)(3). This was because it was found to be operating in a manner not significantly distinguishable from a commercial endeavor, and thus furthering a

substantial non-exempt purpose. The court also found that the organization's patrons were not limited to exempt entities, or a charitable class.

Ohio Disability Association v. Commissioner, T.C. Memo 2009-261 (2009), states denial is justified because responses to requests for additional information failed to supplement the initial application or clarify purposes and activities, and generalizations did not provide sufficient detail to determine that the organization would be operated exclusively for exempt purposes.

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 are silent regarding your purpose and you were formed as a mutual benefit corporation, rather than a public benefit corporation. Additionally, your Articles include a clause that calls for distribution of your assets to your members upon your dissolution. As stated in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4), to satisfy the organizational test, you 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

While you plan to conduct some charitable and educational activities in the future, you are primarily formed to operate a cattle farm for the purpose of buying, breeding and selling cattle. Your operation of a cattle farm is a substantial non-exempt purpose. Therefore, you are not operated for exclusively charitable and educational purposes under section 1.501(c)(3)-1(c)(1).

You are organized as a mutual benefit corporation and your balance sheet includes shareholders' equity as a line item. Your net earnings are set to substantially benefit private individuals, which precludes exemption under Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are like the organization described in Rev. Rul. 73-127. You are operated in a similar manner to profit-making cattle farms, and your gross earnings are used to principally pay customary operating expenses incurred in the operation of a farm and to expand the operations of the farm. Any educational or charitable programs you conduct are incidental to the purpose of operating a farm. Since most of your activities further substantial non-exempt purposes, you are not operating exclusively for an exempt purpose under Section 501(c)(3) of the Code, as described in Better Business Bureau of Washington D.C., Inc.

Your expenses primarily relate to maintaining and operating the farm. You indicated that your income will be distributed to your shareholders, which is a process generally reserved for for-profit entities. Like the organization described in Arlie Foundation, Inc., you are operating in a manner not significantly distinguishable from a regular trade or business, and thus furthering a substantial non-exempt purpose.

You provided very little detail regarding your operations despite multiple requests for same. As explained in Ohio Disability Association, although you provided information when it was requested, it failed to clarify your

activities, and denial is justified. Additionally, the information you did provide confirms your substantial non-exempt purposes, disqualifying you from exemption under Section 501(c)(3) of the Code.

Conclusion

You are neither organized nor operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. You are a mutual benefit corporation, your formation document does not limit your purposes to those described in Section 501(c)(3), and your assets will be distributed to your members upon your dissolution. You shareholders will have equity, which also provides a disqualifying substantial private benefit to individuals. Additionally, your operation of a cattle farm is a substantial non-exempt purpose and precludes you from exemption. 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. 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