



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Number: **201835010**  
Release Date: 8/31/2018

Date:  
June 5, 2018  
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

**UIL: 521.00-00**

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 521 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.

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.

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 4034, *Proposed Adverse Determination*

Redacted Letter 4040, *Final Adverse Determination - 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:**

B = State  
C = Date  
d dollars = Amount

**UIL:**  
521.00-00

Dear \_\_\_\_\_ :

We considered your application for recognition of exemption from federal income tax under Section 521 of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 521. This letter explains the basis for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under Section 521 of the Code? No, for the reasons stated below.

**Facts**

You were incorporated in the state of B on C. Your Articles of Incorporation state that you are formed for the following purposes:

1. To create a cooperative, rooted in local food production, that strengthens the physical and financial well-being of the community
2. To provide local food producers and consumers a year-round market for buying and selling goods and services according to consumer cooperative and financially sound principles
3. To provide your members with any cooperative services or products
4. To inspire the extension of the cooperative model and the expansion of agricultural and food-based enterprise in your region
5. To empower the community to educate itself, and
6. To engage in all such activities as are incidental or conducive to attainment of your purposes.

Your Articles of Incorporation state that your membership shall include, "individuals, firms, partnerships, limited liability companies, associations, corporations, federal, state or local governmental bodies or any subdivision therefore, or any other person or legal entity that applies for the services and products furnished by the corporation."

Some of your members are producers, but you said that the majority of your members are consumers buying from your member producers. You function like a food co-op. Your consumer members buy products from your various producer members.

You do not purchase supplies or equipment for your members. You also do not market or sell products to non-members. Customers must be members to make purchases. Your annual membership fee is d dollars.

You describe yourself as a local food hub where your members order products via an online market place and pick up products at a specified location. Products are purchased directly from the producers based on the orders placed on your website. Your website describes the goods your producers sell, which includes things such as fruits, vegetables, fish, tea, honey, chocolate, and ice cream. Producers can bring excess produce, not listed on the website, to the pick-up location for sale to either members or non-members. Sales made by your producer members to non-members are minimal.

Your Articles of Incorporation and Bylaws allow for surplus funds to be held. Both documents state:

The corporation shall operate for the mutual benefit of its members as nearly as possible at cost, provided that reasonable reserves, as determined by the Board of Directors, may be set aside and accumulated for the purposes as the Board of Directors may determine are in the best interest of the corporation. All activities of the corporation shall be consistent with applicable law and the public interest. After all expenses and expenditures of the corporation have been paid and reasonable reserves, as determined by the Board of Directors, set aside, the net earnings of the corporation shall be accumulated in a surplus fund. The surplus fund, or any portion thereof, shall be distributed to members as determined by the Board.

Your income statement includes sales which is offset by cost of goods sold. Your income statement does not include distribution of profits to your members.

### **Law**

Section 464(e)(1) of the Code defines the term “farming” as the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. For purposes of the preceding sentence, trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

Section 521(b)(1) of the Code states that the type of farmers’ cooperative exempt from taxation are farmers, fruit growers, or like associations organized and operated on a cooperative basis (A) for the purpose of marketing the products of members or other producers, and turning back the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (B) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses.

Section 521(b)(3) of the Code permits exempt cooperatives to accumulate certain reserves for two specified purposes, without loss of exemption:

- To satisfy a state statutory duty, not mere legal privilege, to maintain a reserve, or
- For any necessary purpose.

Treasury Regulation Section 1.521-1(a)(1) states that a cooperative association engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc., and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, is exempt from income tax.

Treas. Reg. Section 1.521-1(a)(3) provides in part that the accumulation and maintenance of a reserve required by State statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy exemption.

Treas. Reg. Section 1.521-1(b) states that cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt.

In Revenue Ruling 64-246, 1964-2 C.B. 154, an organization was engaged in the business of harvesting, processing, buying, selling, storing, and otherwise handling fish and fish products for its members and other patrons. Its membership was restricted to persons engaged in the production of agricultural commodities, including fish of commercial value produced in privately-owned waters. The Service held that because the association was engaged in cooperatively marketing fish in privately-owned waters, it was considered to be an organization composed of producers of "farm-raised fish" which are, in other words, farm products. The Service held that the organization was exempt under Section 521 as a farmers' cooperative.

#### **Application of law**

You are not described in Section 521(b)(1) of the Code and Treas. Reg. Section 521-1(a)(1) because you are not a cooperative of producers who are joining together to sell their produce at a fair price. You also do not purchase supplies for your members. Instead, your membership is a mixture of farmers, community members, businesses and anyone interested in selling and purchasing fresh food. The majority of your members are not farmers or producers; rather, they are consumers.

Your website includes among your producers some that sell fish and other non-crops. Regarding the fish, you did not indicate where the producers catch them. In Rev. Rul. 64-246, the Service emphasized that fish and fish products must be harvested from privately owned waters to be considered "farm-raised fish" to be classified as a farm product under Section 521 of the Code. Additionally, you have producers that sell other non-crops, such as chocolate, tea and ice cream. Even if you would otherwise qualify under Section 521, it is unlikely that all of these items would qualify as "farm" products as described in Section 464(e)(1).

Your Articles of Incorporation and Bylaws allow for surplus funds to be held. The surplus funds may be set aside and accumulated for any purpose that your board determines is in your best interest. After all expenses have been paid, the board may distribute either all or part of the surplus fund to your members. This surplus fund held for unspecified purposes does not meet the requirements of Section 521(b)(3) of the Code and Treas. Reg. 1.521-1(a)(3).

Additionally, you are not a farmers' cooperative as described in Section 521(b)(1) of the Code and Treas. Reg. Section 1.521-1(b) because you do not purchase supplies and equipment for your members.

Section 521 of the Code provides a way for farmers to either market or purchase items cooperatively, with the profits being shared amongst the members. Your income statement does not include the distribution of profits to your members. Also, a large portion of your members are consumers. You provide a way to connect farmers and consumers, but your activities do not fall within the purview of Section 521 as a farmers' cooperative.

### Conclusion

Based on the information submitted, you do not qualify for exemption under Section 521 of the Code as a farmers' cooperative. You do not market your members' products in a cooperative manner and you do not cooperatively purchase supplies or equipment for your members. Your members are largely consumers, and not farmers or the like. Your producer members sell non-crop items and you allow surplus funds to be held. You also do not distribute profits to your members cooperatively. Therefore, you are not a farmers' cooperative as described in Section 521.

### 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