



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **201835012**  
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: 501.03-00, 501.03-05, 501.31-00, 501.35-00**

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:**  
February 21, 2018  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

M = state  
N = city  
O = date  
p = number  
q = number  
r = number

**UIL:**

501.03-00  
501.03-05  
501.31-00  
501.35-00

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 corporation under the state law of M on date O. Your purpose as stated in your Articles of Incorporation is "exclusively for charitable purposes, including: (i) promoting sports, recreation, health and fitness through church leagues and tournaments, exercise programs, and recreational activities; and (ii) provide a safe and nurturing environment to help adults and children in N."

The activities as described in your Form 1023 application is "to promote health and fitness through physical activity. The organization's goal is to organize adult and youth athletic competitions."

You later stated that you plan to organize and run sports tournaments for adult men and women, as well as children. You state you will focus your effort on an adult male basketball tournament and a youth basketball tournament. It is estimated that each adult basketball tournament will have about p participants, on q teams and will compete in regular season games and playoff rounds. In three to five years, expansion is projected to include basketball and soccer programs and clinics for kids ages three and up, as well as women's volleyball tournaments and other sports. Each youth basketball tournament will have r participants.

You state you do not have flyers or other printed promotional materials. Your website is used for marketing.

Your proposed sources of financial support will be from ticket sales, advertisement income, auctions, annual fundraisers, and donations. Your expenses will go to programs, salaries and wages, and other expenses.

### **Law**

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for 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) provides that, in order for an organization to be exempt under Section 501(c)(3) of the Code, it 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 or operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one, or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(c)(1) of the regulations 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 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.

Rev. Rul. 65-2 held that a foundation operated exclusively to teach children a sport by holding clinics conducted by qualified instructors in schools, playgrounds, and parks and by providing free instruction, equipment, and facilities qualifies for exemption under Section 501(c)(3) of the Code.

Rev. Rul. 70-4 held that an organization was formed for the stated purposes of promoting the health of the general public by encouraging all persons to improve their physical condition and of fostering by educational means public interest in a particular sport for amateurs. The organization engaged in promoting and regulating a sport for amateurs is not exempt under section 501(c)(3) of the Code but is exempt under section 501(c)(4).

Rev. Rul. 80-215 held that an organization formed to develop, promote, and regulate a sport for individuals under 18 years of age by organizing local and statewide competitions, promulgating rules, organizing officials, presenting seminars, distributing a newsletter and otherwise encouraging growth of the sport qualified for exemption under IRC 501(c)(3).

In First Libertarian Church v. Commissioner of Internal Revenue, 74 T.C. 396 (1980), the court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a non-exempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non-exempt purpose. The court explained that "clearly the regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) will be denied."

In St. Louis Science Fiction Limited v. Commissioner, 49 TCM 1126, 1985-162, the Tax Court held that a science fiction society failed to qualify for tax-exempt status under section 501(c)(3) of the Code. Although many of the organization's functions at its annual conventions (the organization's principal activity) were educational, its overall agenda was not exclusively educational. A substantial portion of convention affairs were social and recreational in nature.

#### **Application of law**

You are not described under Section 501(c)(3) of the Code or Treas. Reg. Section 1.501(c)(3)-1(a)(1) because you do not meet the organizational or operational tests.

To satisfy the organizational test, an organization must have a valid purpose clause (Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv)). Your Articles of Incorporation state your purpose is "exclusively for charitable purposes, including: (i) promoting sports, recreation, health and fitness through church leagues and tournaments, exercise programs, and recreational activities; and (ii) provide a safe and nurturing environment to help adults and children in N." These purposes, specifically encouraging sports, recreational, and social interaction between adults, are not exclusive exempt purposes described under Section 501(c)(3) of the Code or corresponding regulations. Therefore, you do not meet the organizational test.

You also do not meet the operational test. You indicated you plan to hold sports tournaments for adult men and women with the focus on an adult male and youth basketball tournament. While you intend to expand in three to five years to include programs and clinics for kids three and up, as well as women's volleyball tournaments, this still includes adult sports and is not exclusive in nature to either youth or education. Sports and social and recreational events are not considered exempt activities under Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You differ from the organizations in Revenue Rulings 80-215 and 65-2, where sports were offered to children under the age of 18. You will focus your activities more than insubstantially on basketball tournaments for adult men. Recreational sports for adults are not considered charitable or educational purposes under Section 501(c)(3) of the Code.

You are similar to the organization described in Revenue Ruling 70-4 that received exemption under Section 501(c)(4). Like the organization in this ruling, offering sports, tournaments or other recreational activities for adults encouraged all persons to improve their physical condition and fosters public interest in a particular sport for amateurs. However, an organization engaged in promoting and regulating a sport for amateurs is not exempt under Section 501(c)(3) of the Code.

You are like the organizations described in First Libertarian Church and St. Louis Science Fiction Limited v. Commissioner. While portions of your activities are directed at youth, and will in part be educational in teaching a sport, more than an insubstantial amount of your activities are directed at sports for adults, and therefore more than a substantial portion of your activities are social and recreational in nature. Similar to where a substantial portion of convention affairs were social and recreational in nature in St. Louis, if a substantial secondary purpose is not an exempt one, such as your adult recreational activities, qualification under section 501(c)(3) will be denied.

#### **Your position**

You claim that your mission is to promote sports, recreation, health and fitness in a nurturing environment incorporating Christian principles and teaching fundamentals to foster growth and development. You claim that

through sports and exercise programs and recreational activities for people in many different age groups from children to adults on various levels, you help people to become physically active and health conscious to improve and maintain their well-being.

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

As described above, you differ from Revenue Rulings 80-215 and 65-2 where those organizations hold sports tournaments for children under the age of 18. Based on your stated purpose and the activity you conduct or plan to conduct, you have a substantial purpose of providing social and recreational activities for adult men and women. Hence, the overall facts and circumstances involved show you have a substantial non-exempt purpose of conducting social and recreational activities.

### **Conclusion**

Based on the facts and information submitted, you are not organized and operated exclusively for exempt purposes. You do not meet the organizational test because your organizing document does not properly limit your purposes to those described in Section 501(c)(3) of the Code. Likewise, you do not meet the operational test because you conduct substantial social and recreational activities. Accordingly, you do not qualify for exemption under section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

We have not considered whether you qualify for exemption under any other section Internal Revenue Code. We explained your option to apply for exemption under a different section but you declined to do so.

### **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