



**Department of the Treasury
Internal Revenue Service**

P.O. Box 2508
Cincinnati, OH 45201

Date:
August 29, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: 201847011
Release Date: 11/23/2018

UIL Number: 501.00-00, 501.03-05

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:
June 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = State
C = Date
D = Individuals

UIL:
501.00-00
501.03-05

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 submitted Form 1023-EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Your application was selected for further development and detailed information was requested supplemental to the Form 1023-EZ.

According to your Articles of Incorporation ("Articles"), you were formed in the state of B on C to "operate and maintain historical [sic] cemetery [sic] for the benefit of burial plots contained therein." Your Articles are silent regarding the disposition of your assets upon your dissolution. We informed you that your Articles did not meet the organizational test under Section 501(c)(3) of the Code and you attested that you had amended the purpose and dissolution of your Articles to include the necessary provisions as required under Section 501(c)(3).

You were established to operate and maintain a cemetery "for the benefit of the direct descendants of D." There shall be "no discrimination in the permitting of lots, including selecting, permitting or family favoritism."

The cemetery is located on about a quarter of an acre of land and it is not owned by you. You said that the current landowner has stated that due to this being a historical burial site they are hoping to one day sell this cemetery parcel. You hope to purchase this piece of land to continue the mourning of your family members that have passed. This is a burial site only for family. With family documentation going back several hundred years, it has been used to help preserve local, family and regional history.

Activities at the cemetery may vary from visits, burials, masses, and even cleaning based on weather, vegetation and need. At a minimum, two site cleanings a year take place as well as quarterly meetings. There are no employees or paid staff. The cemetery and all burials require volunteer time from others within the family. With an abundance of history and loved ones on site, a family representative is frequently there.

You shall establish rules and regulations for the use and maintenance of the cemetery. Your board will consist of seven volunteer members. They will determine the location of graves, capacity of lots, the type of plantings, monuments and markers that will be permitted, and will keep accurate record of permitted and available lots. A maintenance program shall be established for the care of the cemetery and management in accordance with the U.S. Department of Agriculture's policies and procedures.

No deceased person shall be entered in to the cemetery until a board member has found that:

1. The burial permit has been obtained from the public health office as required by law
2. The burial use permit for the cemetery has been paid to the U.S. Department of Agriculture
3. The person being buried has the burial rights to such lot as approved by the U.S. Department of Agriculture
4. Such lot is not beyond its capacity, and
5. The proper record is made of the name and age of the deceased person and the exact location of the grave.

You will charge no fees for available lots in the cemetery. You said that, "Family is currently supported by family and loved ones in the burial process." This includes site preparation and placement of the remains.

The board will keep records and an official map or plan of the cemetery. In addition to any permit fees, any person, company or entity which desires a permit to open and close graves in the cemetery shall execute an indemnification agreement holding the board harmless from any and all damages resulting from permit activities within the cemetery.

You will have a cemetery maintenance fund for the maintenance and care of the cemetery. The treasurer will be responsible for the fund. The board may determine all amounts paid into or which become part of the cemetery maintenance fund may be invested or reinvested by the treasurer in a manner that is allowable by law.

Law

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax organizations organized and operated exclusively for charitable, religious or educational 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 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(c)(1) states that in order to meet the operational test, 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(d)(2) defines charitable as including the following purposes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption under Section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes.

Application of law

In order to qualify for exemption as 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, as explained in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You are not operating exclusively for exempt purposes described under Section 501(c)(3); rather, your sole activity is operating and maintaining a family cemetery.

To satisfy the operational test under Treas. Reg. Section 1.501(c)(3)-1(c)(1) an organization must establish that it is operated exclusively for one or more exempt purposes. You were formed for the sole non-exempt purpose of operating and maintaining a family cemetery. Your activities are not charitable as defined in Treas. Reg. Section 1.501(c)(3)-1(d)(2). Because your activities do not further Section 501(c)(3) purposes, you do not qualify for exemption.

As stated in Better Business Bureau of Washington, D.C., Inc., the presence of a single non-exempt purpose, if substantial in nature will destroy a claim for exemption under Section 501(c)(3). Since operating a family cemetery does not further Section 501(c)(3) purposes, you do not qualify for exemption under Section 501(c)(3).

Conclusion

Based on the information submitted, you are not operating exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code. Your only activity is operating a family cemetery. Therefore, 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