



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Number: **201849012**  
Release Date: 12/7/2018

Date: September 11, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

**UIL Code: 501.05-01**

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

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(5) 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 under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*



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

Date: June 15, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

X = State

Y = Date

Z = Name

d dollars = Amount

e dollars = Amount

f dollars = Amount

**UIL:**

501.05-01

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)(5) 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)(5) of the Code? No, for the reasons stated below.

**Facts**

You formed as a Mutual Benefit Corporation in the State of X on Y by Z. Your stated purpose is to engage in agriculture.

Your bylaws state that you have two classes of membership consisting of Regular Members who are engaged in agriculture and Honorary Members who are not engaged in agriculture. All members must be approved by your board or membership committee upon payment of dues. The annual membership dues are d dollars. In addition, you may assess members for capital contributions to enable you to acquire assets. Currently, you have no members.

Your bylaws also state that you will have one or more directors, currently you have one director, Z. You pay him e dollars per year and lease property from him for f dollars per month to conduct your agricultural operations.

In your first year of operations, you produced and harvested a crop on the land you leased from Z. This consisted of initiating the seedling germination in a greenhouse in early spring. About a month later, you planted the female seedlings and treated them for pests with a non-toxic spray, and watered them with enzymes,

teas, and fertilizer. About a month later, you leafed and cleaned out the plants that had grown from the seedlings. For the next few months, you continued the necessary maintenance including monitoring for molds. In early fall, you harvested the crop which involved cutting, hanging, drying, and storing the crop in sealed light buckets and bins; and in early winter, you did the final processing. You then sold the harvested crop in the beginning of your second year of operations.

Z did the individual work as well as traded some of the work with friends. Concerning financial support, you have borrowed funds from Z as well as generated funds from the sale of your crop. Your only expenses are listed as occupancy and salaries. Furthermore, you are considering capital investment options to:

- Help you acquire the needed permits required by your locale,
- Develop infrastructure,
- Fund your operations, and
- Build and develop additional farm sites.

Your financial data reflects that your sole source of income is from product sales. Your expenses consist solely of salaries and occupancy expenses. In your first year of operations you ran a deficit of several thousand dollars after these expenses.

You indicated in your application that your "Articles of the Corporation" have authorized \_\_\_\_\_ shares of common stock although this provision could not be located in the Articles of Incorporation that you submitted. \_\_\_\_\_ percent of these shares have been issued to Z. Furthermore, the common shares have no par value and no dividends have been paid. Your organizational documents also do not authorize dividends to any class of securities.

#### **Law**

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Treasury Regulation Section 1.501(c)(5)-1(a) states that the organizations contemplated by section 501(c)(5) of the Code as entitled to exemption from income taxation are those which:

- (1) Have no net earnings inuring to the benefit of any member; and
- (2) Have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Revenue Ruling 74-195, 1974-1 C.B. 135 held that a nonprofit organization formed to manage, graze, and sell its members' cattle is providing a direct business service to its members and does not qualify for exemption under Section 501(c)(5) of the Code.

#### **Application of law**

You are not described in Section 501(c)(5) of the Code or Treas. Reg. Section 1.501(c)(5)-1(a) because your activities are not aimed at the overall betterment of conditions within the farming industry, the improvement of the grade of products, or the development of a higher degree of efficiency in the farming industry. You operate

solely to grow, harvest, and sell the crops you produce. You are compensating Z to run your operations on property leased from him. Therefore, your earnings are inuring to the benefit of Z.

You are similar to the organization described in Revenue Ruling 74-195 in that you are formed to manage, grow, and sell crops of your founder and members. You are not bettering the conditions of those engaged in agricultural pursuits, improving the grade of their products, or developing a higher degree of efficiency in their operations. You are operating like a commercial farm operation.

### **Conclusion**

Because your activities are not in furtherance of a purpose described under Section 501(c)(5) of the Code and you operate in a manner in which your net earnings inure to the benefit of your founder/sole director, you do not qualify for exemption under Section 501(c)(5) of the Code.

### **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