



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

Release Number: **201904015**
Release Date: 1/25/2019
UIL Code: 501.03-00
501.03-30
501.33-00

Date: November 1, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

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: September 6, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

W = Ethnicity
X = State
Y = Date #1
Z = Date #2

UIL:

501.03-00
501.03-30
501.33-00

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

You attest that you were incorporated on Z, in the state of X. 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 attest 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 was requested supplemental to the above attestations including a complete copy of your original organizing document and a narrative description of your activities.

Your purpose as stated in your articles of incorporation is:

to develop programs that will enrich and uplift the socio-economic well-being of your members.

Your bylaws state that your purposes include:

1. To encourage all Ws residing in the X area to join in unity and solidarity.
2. To develop and promote community-oriented and charitable programs that will enrich and uplift the socio-economic well-being of its members
3. To integrate and assimilate into the body politic of the US
4. To coordinate with and work in close cooperation with other W organizations based in the USA for the purpose of maintaining mutual and beneficial relationships towards causes befitting both organizations.

Your bylaws provide that your assets are irrevocably dedicated to charitable purposes; no part of the net income or assets shall inure to the benefit any private individual or entity.

You describe your specific activities as contacting several W professional and business owners in your area to provide services and/or products for free or at discounted prices for your members. You have sixteen members but have not elected a board of directors. So far, four businesses have promised to offer discounts to your members. You state you need the recognition of exempt status so that businesses will provide your members free or discounted services and/or products.

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.

Section 1.501(c)(3)-1(a)(1) of the Treasury Regulations 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.

Section 1.501(c)(3)-1(b)(1)(iv) of the Treasury Regulations 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).

Section 1.501(c)(3)-1(b)(4) of the Treasury Regulations states an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose such as distributing its net assets to another charitable organization.

Section 1.501(c)(3)-1(c)(1) of the Treasury 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.

Section 1.501(c)(3)-1(d)(1)(i) of the Treasury Regulations provides that an organization may be exempt as an organization described in Section 501(c)(3) of the Code if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(d)(1)(ii) of the Treasury Regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in the Regulations unless it serves a public rather than a private interest. To meet the requirement of this section, it is necessary for an organization to establish that it is not organized or operated for benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the court held that an organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under Section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes.

Application of law

You are not described in Section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable purposes. Furthermore, your activities provide substantial private benefit to your members.

Organizational Test

Your Articles of Incorporation do not contain the requisite purpose and dissolution provisions of Section 501(c)(3) of the Code.

You do not meet the requirements of Section 1.501(c)(3)-1(a)(1) of the Regulations because you fail to meet both the organizational and operational tests.

Your Articles of Incorporation contain a purpose that is broader than the purposes specified in Section 501(c)(3) of the Code and Section 1.501(c)(3)-1(b)(1)(iv) of the Regulations. Your purpose is to develop programs that will enrich and uplift the socio-economic well-being of your members. Secondly, your Articles fail to state your assets are dedicated to an exempt purpose. See Treas. Reg. Section 1.501(c)(3)-1(b)(4).

Operational Test

Your exclusive activity is securing free or discounted services and/or products for your members. These are not activities that are described in Section 501(c)(3) of the Code. In fact, these activities serve the private interests of your members. Exemption under Section 501(c)(3) is precluded when more than an insubstantial amount of the activities serve private interests. Therefore, you do not meet the requirements of Section 1.501(c)(3)-1(c)(1) of the Regulations.

You are not described in Section 501(c)(3) because you are not organized and operated exclusively for one or more exempt purposes described in Section 1.501(c)(3)-1(d)(1)(i) of the Regulations.

You are organized and operated for the private benefit of your members. Therefore, you do not meet the requirements of Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations.

Like the organization in Better Business Bureau v. United States, *supra*, you have a substantial non-exempt purpose, that is, securing free and discounted services and products for your members.

Conclusion

Base on the above, we find that you are not organized and operated for exempt purposes within the meaning of Section 501(c)(3) of the Code. You do not meet the organizational test for exemption because your organizing document does not limit your purposes to a charitable purpose nor do your articles state, upon dissolution, your assets will be it contain the requisite dissolution clause. You do not meet the operational test for exemption since your activities consist of serving the private interests of your members. Accordingly, we conclude you do not qualify for exemption under Section 501(c)(3) 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. 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