



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

Number: **201905005**
Release Date: 2/1/2019

Date:
November 9, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 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:
September 12, 2018
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date of formation
D = State of formation
K = Name of sole director, sole member, and President
L = Consultant
P = Treasurer
x dollars = L's monthly fee
y dollars = Amount received from principal sponsor

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

According to the Articles of Incorporation you filed on B with the State of D the objects and purposes for which you are organized are to operate in furtherance of agriculture in the State of D, through the promotion, betterment and improvement of various breeds of horses and dogs owned by persons or entities located or operating in D, including the promotion of the racing of horses and dogs at racetracks operating and/or licensed in D to conduct horse and dog racing and pari-mutuel wagering on such racing. Your Bylaws state your purposes in identical terms.

The Bylaws authorize five members; currently K is President and Treasurer, sole director, and sole member. There is one other officer, P, the Treasurer.

You describe your activities as educating the public, including state and local government entities, regarding the values, benefits and contributions of the horse racing and greyhound racing industries (breeding, raising, training and racing) to the state's agricultural, entertainment, and tourism industries, the benefits of creating racing and pari-mutuel gaming activities with electronic gaming equipment at racing facilities, and the various jobs and tourism activities associated with such facilities.

You submitted a sample of printed material, a recent economic impact study of the horse racing industry in a neighboring state, which you have furnished to members of the D legislature, to encourage them to approve legislation designed to encourage the operation of legal and regulated gaming at the State's tracks. With it you provided a brochure you produced to promote the same legislation.

Your present and future sources of financial support are contributions from individuals, companies and associations affiliated with racing. A single company has provided substantially all your support, y dollars as of the date of your most recent response. This "principal sponsor" gave no direction, advice, or suggestions as to the creation of your organization. It confers with you about budget, which it has the right to approve, and about legislative language you are pursuing.

Your principal identifiable expenditures are for lobbying, education, public awareness, public relations, consultants, and office lease. Legislative expenditures comprise about one quarter of the total. You also make contributions of an unknown amount to candidates for public office.

Your website indicates that you are made up of farmers, ranchers, D businesses and trade associations, who have come together to support pari-mutuel race tracks in D. You stated that none of the individuals, organizations and/or companies involved with your efforts --

- Elects members of your governing body or serves on it, or levies assessments upon themselves to finance the activities.
- Has a right to direct your activities. You have granted them authority to approve editorial content on some written materials, designate conferees and deliver presentations before groups of organizations, individuals and legislators, and to develop and deliver supporting activities to assist you with your efforts.
- Has a right to direct the activities of K or L. They may provide suggestions and ideas for K's consideration.
- Has a right to direct how your funds are used. You have given these people and entities the opportunity to make suggestions how to use your funds.

You have a consulting services agreement with L, to perform certain services including, but not limited to, lobbying, advisory, and consultation services. K is the owner of L. Under the agreement you pay L x dollars per month.

Law

Section 501(c)(5) of the Internal Revenue Code lists types of organizations exempt from federal income tax exemption under § 501(a) that are described as labor, agricultural, or horticultural organizations.

Section 501(g) defines, for purposes of subsection (c)(5), the term "agricultural" as including the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

Treasury Regulation Section § 1.501(c)(5)-1 provides that the organizations contemplated by IRC § 501(c)(5) 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.

In Rev. Rul. 67-252, 1967-2 C.B. 195, a nonprofit corporation formed to promote the sale and use of a processed agricultural product, the members of which are processors, packagers, and distributors, does not qualify for exemption under Section 501(c)(5), because improvement of the conditions of persons engaged in agriculture arises only indirectly from the activities of the organization. The members of the organization are not themselves engaged in agriculture, defined in the Revenue Ruling as “the art or science of cultivating the ground, especially in fields or large acreage and includes preparing the soil, planting seeds, raising crops, and rearing, feeding, and managing livestock,” a definition consistent with Sec. 501(g) of the Code.

Rev. Rul. 73-520, 1973-2 C.B. 180, describes an organization formed to promote and protect a particular breed of dog. The organization's members do not raise or use the dogs as farm animals. Using the dictionary definitions of “agriculture” as the art or science of cultivating the ground, including preparing the soil, planting seeds, raising crops, and rearing, feeding, and managing livestock,” a definition consistent with Sec. 501(g) of the Code, and of “livestock” as “the horses, cattle, sheep, and other useful animals kept or raised on a farm or ranch,” it reasons that “Since the dogs are not used as farm animals, they cannot be considered livestock.” It concludes that, by promoting and protecting this particular breed of dog, the organization does not have as its object the betterment of conditions of persons engaged in agriculture and therefore is not exempt from Federal income tax under Section 501(c)(5).

Forest City Live Stock and Fair Company v. Commissioner, B.T.A.M. (P-H) P32,215 (1932), involved an organization that was created with the purpose of giving and holding fairs, stock shows and race meetings and to acquire property in connection therewith. Although the organization did hold fairs at one time, for the years at issue the sole activity of the organization was the conduct of pari-mutuel horse races at its track. The Court stated, in holding that the organization was not an exempt agricultural organization, that, “The single fact that horse racing tends to promote the breeding and raising of better race horses, which are raised on a farm, is not enough.”

Application of law

You are not an organization described in Treas. Reg. 1.501(c)(5)-1 because your objective is not the betterment of conditions of persons engaged in agriculture as Section 501(g) defines that word, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations. Your stated purpose and objective is the furtherance of agriculture, through the promotion, betterment and improvement of various breeds of horses and dogs owned by persons or entities located or operating in D, “including the promotion of the racing of horses and dogs at racetracks operating and/or licensed in D to conduct horse and dog racing and pari-mutuel wagering on such racing.” Your activities, however, consist exclusively of educating the public, including state and local government entities, regarding the values, benefits and contributions of the horse racing and greyhound racing industries to the state’s economy, not least to the entertainment and tourism sectors thereof, and the benefits of permitting electronic gaming alongside pari-mutuel betting at racing facilities. None of your activities have as objects the betterment of the conditions of persons engaged in the raising or improvement of livestock, or the development of a higher degree of efficiency in their raising of livestock, although persons engaged in the raising of greyhounds and race horses may benefit incidentally from your activities.

You are similar to the organization described in Rev. Rul. 67-252 in that you do not have a membership that is engaged in the business of agriculture who are seeking betterments in conditions in their own line of business, but have been formed to improve conditions in non-agricultural businesses: horse racing, dog racing, pari-mutual and electronic gambling, entertainment and tourism, with increased revenues to state and local

governments. Likewise, in Forest City Live Stock and Fair Company the Court held that for an organization to qualify as an exempt agricultural association it is not enough that horse racing tends to promote the breeding and raising of better race horses, which are raised on a farm. As in both the Revenue Ruling and the court case, any benefits of your activities to persons actually engaged in agriculture are incidental. Furthermore, even if your object were to improve conditions for persons engaged in the business of raising racing greyhounds, such persons are not engaged in agriculture, inasmuch as Rev. Rul. 73-520 holds that racing dogs are not livestock.

Conclusion

Based on the information provided we conclude that your activities fall outside of the scope of Section 501(c)(5) of the Code, and accordingly, you do not qualify for recognition of exemption under this subsection.

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