



**Department of the Treasury  
Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201908024**  
Release Date: 2/22/2019  
UIL Number: 501.03-01, 501.03-05,  
501.38-01

Date:  
November 28, 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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

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 28, 2018  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = Date  
C = State  
D = Type of service  
e dollars = Amount  
f dollars = Amount

**UIL:**  
501.03-00  
501.03-05  
501.38-01

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)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

**Issue**

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

**Facts**

You were previously formed as an unincorporated association and according to our records you are exempt under Section 501(c)(6) of the Code. You re-formed as a corporation on B in the state of C. According to your Articles of Incorporation you are formed exclusively for Section 501(c)(3) purposes. You will fulfill your mission by:

- (a) Leading in the development, availability, implementation and enhancement of a universal emergency telephone number common to all jurisdiction(s) through research, planning, training and education;
- (b) Representing your members before communications regulatory agencies and appropriate policy making legislative bodies;
- (c) Enabling all citizens to have immediate access to emergency public safety services so that safety of human life, protection of property and civic welfare are benefited to the utmost degree; and
- (d) Aiding and assisting in the timely collection and dissemination of information relating to a universal emergency telephone number.

You fulfill your purpose by providing training for your members serving in a particular agency in C, monitoring legislative initiatives that affect D services in your state, provide public education to the citizens of C regarding the operation of D service, and legislative proposal and trends that could affect that service.

You are a membership organization. Membership categories are the same as for the national association. Your members will be public sector members, private sector members, emergency dispatcher members, and associate members.

You indicated in your application that you will attempt to influence legislation. However, you did not elect to have your legislative activities measured by expenditures by filing Form 5768. You have a contract with a lobbyist. The lobbyist works to influence legislation to benefit you and your members. You compensate the lobbyist between e dollars and f dollars per year.

In your application, you stated that none of your time is expended attempting to influence legislation. When we asked about your activities, you said that when any officer or member speaks directly with a legislator, it is for educational purposes only, helping legislators understand the effect of proposed legislation. During open season you endorse those legislative acts which support your members. At no time do you urge votes for a candidate. You indicated that you only spend one to five percent of your time influencing legislation.

You provided copies of two of your recent Consulting Agreements with a lobbyist. The agreements are between you, two other organizations, and the consultant. The consultant expense will be split three ways. The agreement states that the consultant is engaged in the business of providing governmental consulting and lobbying services. The scope of the services provided by the lobbyist are as follows:

- Act as a liaison for the client and facilitate contracts with various branches of state government regarding clients' positions on public policy affecting its industry and
- Facilitate and engage in communication and lobbying with the Legislative and Executive Branches on legislation of interest to the client.

You provided financial data from several years ago, prior to your incorporation, and for two additional years in the future. Years one through five, below, include only actual historical financial data. Years six and seven are projections.

Year	Percent of total revenue expended for Lobbyist
1	%
2	%
3	0%
4	%
5	%
6	%
7	%

Some of your revenue comes from membership dues but most of your revenue is derived from an annual joint conference that you hold with two other organizations.

#### Law

Section 501(c)(3) of the Code provides that organizations organized and operated exclusively for charitable, religious or educational purposes will be exempt from federal income tax if no part of its net earnings inures to the benefit of any private shareholder or individual, no part of its activities is carrying on propaganda, or otherwise attempting, to influence legislation (except as provided in 501(h)), and it does not participate in, or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states 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 that 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) provides an organization is operated exclusively for exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in Section 501(c)(3). It is not so operated if more than an insubstantial part of its activities does not further those purposes.

Treas. Reg. Section 1.501(c)(3)-1(c)(3) provides that an organization is not operated exclusively for one or more exempt purposes if it is an 'action' organization. Under this section an organization is an 'action' organization if a substantial part of its activities is attempting to influence legislation by contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation.

Treas. Reg. Section 1.501(h)-1(a)(4) provides, in part, that a public charity that does not elect the expenditure test remains subject to the substantial part test. The substantial part test is applied without regard to the provisions of Code Sections 501(h) and 4911 and the related regulations.

In Rev. Rul. 67-293, 1967-2 C.B. 185, it was found that an organization already exempt under Section 501(c)(4) of the Code, and substantially engaged in promoting legislation to protect or otherwise benefit animals, is not exempt from federal income tax under Section 501(c)(3), even though the legislation it advocates may be beneficial to the community, and even though most of the attempts to influence legislation may be indirect.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Haswell v. United States, 205 Ct. Cl. 421 (Ct. Cl. 1974), the Court of Claims cited percentage figures in support of its determination that an organization's lobbying activities were substantial. The amount of the organization's expenditures for lobbying activities ranged from 16.6 percent to 20.5 percent of total expenditures during the four years at issue. While the court stated that a percentage test is only one measure of substantiality (and not, by itself, determinative), it held that these percentages were a strong indication that the organization's purposes were not consistent with charity.

In Taxation with Representation v. Regan, 676 F.2d 715 (1982), TWR is attacking the prohibition against substantial lobbying in Section 501(c)(3) of the Code because it wants to use tax deductible contributions to support substantial lobbying activities. The Court stated that the government shall not subsidize, directly or indirectly, those organizations whose substantial activities are directed toward the accomplishment of legislative goals or the election or defeat of particular candidates. The Service denied Section 501(c)(3) status, concluding that a substantial part of its operation involved lobbying.

### **Application of law**

You are not exempt under Section 501(c)(3) of the Code because you fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You advocate for the adoption of proposed legislation regarding issues serving you and your members. You are not operating exclusively for charitable or educational purposes; rather,

a substantial portion of your funds are expended for the purpose of influencing legislation, which is not an exempt purpose. Because more than an insubstantial portion of your activities is devoted to a non-exempt purpose, you are not exempt as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

Although you have not elected to have your expenditures measured under Section 501(h) by filing Form 5768, you are still subject to the substantial part test, as described in Treas. Reg. Section 1.501(h)-1(a)(4). A substantial part of your activities involves attempting to influence legislation via your contracted lobbyist. Therefore, you are not exempt under Section 501(c)(3) because you are an action organization as described in Treas. Reg. Section 1.501(c)(3)-1(c)(3).

You are like the organization described in Rev. Rul. 67-293 because, although you are formed for the public good, the courts make no distinction between the nature or intent of the legislation.

Like the organization in Better Business Bureau, you have a substantial non-exempt purpose. You spend a large amount of your funds on lobbying activities, which precludes you from exemption under Section 501(c)(3) of the Code. As explained in Haswell, a percentage test is only one measure of substantiality, but the percentages are a strong indication that the organization's purposes are not consistent with charity. In this way, your lobbying expenses are a substantial portion of your total expenditures, which indicates your purposes.

You stated that your volunteers spend very little time on your legislative efforts. However, you spend a substantial portion of your revenue on lobbying activities via a contract you have with a lobbyist. Despite your claim that you spend less than five percent of your efforts on lobbying, your expenditures contradict that statement. Your efforts represent more than insubstantial attempts to influence legislation. You are like the organization in Taxation with Representation, because you are expending a substantial portion of your revenue on lobbying activities.

### **Conclusion**

You do not qualify for exemption under Section 501(c)(3) of the Code because you operate for a substantial non-exempt purpose of funding lobbying. Although you do not qualify for exemption under Section 501(c)(3), your exemption under Section 501(c)(6) remains in effect.

### **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.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892