



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

Date: January 29, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201917008**  
Release Date: 4/26/2019

**UIL Number: 501.00-00, 501.03-00, 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.

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:** November 01, 2018

**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = State

C = Date

**UIL:**

501.00-00

501.03-00

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 shown below.

**Facts**

You were incorporated in the state of B on C. Your Articles of Incorporation provide in part that your purpose and goals are:

- To aid financially disadvantaged patients and patient's families who are affected by the costs of THC and CBD medical treatment by providing financial support to cover costs of living and other expenses that the patients may incur.
- To educate health care providers and the general public about THC and CBD medical treatments;
- To support and engage in research of THC and CBD medical treatments.

You will provide funds to patients with demonstrated financial need to help those patients offset the costs of CBD and THC based medications. All patients who are eligible for such financial assistance must be certified as meeting applicable state requirements to legally obtain CBD and THC based medications for medical reasons. Your financial assistance will not include reimbursement for medical marijuana medicines. You will devise a system to distribute funds based on patients' financial needs.

You have a three-person board. Members of your board own a for profit LLC who has a similar name to yours and is involved in the prescribing of THC and CBD medical treatments. Both you and the LLC share a common goal of aiding patients who use CBD and THC based medications. You share a mailing address with the LLC and personnel from the LLC may serve as your volunteers.

You are supported by gifts, grants and contributions. In addition, you will solicit donations from maintaining email lists of previous donors as well as persons interested in your work. You will also personally solicit from groups who have similar goals. You plan to develop a website which provides information about your mission as well as educational materials for patients. Furthermore, you will accept donations on this website.

You will also engage in educational initiatives such as:

- Developing educational literature to help patients with the administration and treatment of CBD and THC medications;
- Conducting seminars and conducting classes for healthcare professionals about CBD and THC based medical treatments;
- Organizing support groups and disseminating pertinent information for patients and families of patients who suffer from medical conditions that can benefit from THC and CBD medications.

In addition, you will accumulate and publish empirical data reports related to CBD and THC medications and treatments.

#### **Law**

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) that, in order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) 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 it is created are broader than the purposes specified in Section 501(c)(3) of the Code. The fact that the actual operations of such organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(ii) states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in Section 501(c)(3) of the Code in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second) of Trusts, Sections 368, 372 (1959); A Scott and Fratcher, *The Law of Trusts*, Section 368, 372 (4th ed. 1989). However, a trust is invalid if its purpose is illegal. Restatement (Second) of Trusts, Section 377 (1959).

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" as used in Section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

21 U.S.C. Section 802(16) defines marijuana as "all parts of the plant *Cannabis Sativa L.* whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin."

21 U.S.C. Section 821(c), Sch. I(c)(10) lists marijuana as a hallucinogenic substance and includes it on schedule I of the Schedules of Controlled Substances. A schedule I substance is a substance that (1) has a high potential for abuse; (2) has no currently accepted medical use in treatment in the United States; and (3) there is a lack of accepted safety for use of the drug under medical supervision.

21 U.S.C. Section 841(a), known as The Controlled Substances Act, states that it is illegal for anyone to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance.

Rev. Rul. 75-384, 1975-2 C.B. 204, holds that a nonprofit organization, whose purpose was to promote world peace, disarmament, and nonviolent direct action, did not qualify for exemption under Section 501(c)(3) or (c)(4). The organization's primary activity was to sponsor antiwar protest demonstrations in which demonstrators were urged to violate local ordinances and commit acts of civil disobedience. Citing the law of trusts, the ruling stated that all charitable organizations are subject to the requirement that their purposes cannot be illegal or contrary to public policy.

*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 490, 121 S. Ct. 1711, 149 L. Ed. 2d 722 (2001), reiterates that there is only one exception from the Act for cannabis: Government-approved research projects. "It is clear from the text of the Act that Congress has made a determination that marijuana has no medical benefits worthy of an exception." *Id.* at 493.

In *Better Business Bureau of Washington, D.C., Inc. v. United States*, 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In *Ould v. Washington Hospital for Foundlings*, 95 U.S. 303, 311, 24 L. Ed. 450 (1877), the Court noted that "[a] charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man."

In *Mysteryboy, Inc. v. Commissioner, T.C. Memo 2010-13 (2010)*, the Tax Court held that the organization failed the operational test partly because the organization proposed to promote illegal activities.

In *Bob Jones University v. United States, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983)*, the Supreme Court held that racially discriminatory education is contrary to public policy and the University therefore could not be viewed as providing public benefit within the charitable concept.

In *Harding Hospital, Inc. v. United States, 505 F.2d 1068, 1071 (6th Cir. 1974)*, the court held that an organization has the burden of proving that it satisfies the requirements of the particular exemption statute. The court noted that whether an organization has satisfied the operational test is a question of fact.

### **Application of law**

You are not organized and operated exclusively for exempt purposes under Section 501(c)(3) of the Code. An organization can be recognized as exempt under Section 501(c)(3) of the Code only if it shows that it is both organized and operated exclusively for charitable, educational, or other exempt purposes. 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(a)(1).

To satisfy the organizational test, an organization's Articles of Incorporation must limit its purposes to those listed in Section 501(c)(3) of the Code. Additionally, the Articles must not expressly empower the organization to engage, more than insubstantially, in activities that are not in furtherance of those exempt purposes.

The common law of trusts specifies that a charitable trust cannot be created for an illegal purpose. See *Restatement (Second) of Trusts, Section 377*. Similarly, the Supreme Court noted in *Ould v. Washington Hospital for Foundlings, 95 U.S. at 311*, that "[a] charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well-doing and well-being of social man." Like a trust, a Section 501(c)(3) organization cannot be created for a purpose that is illegal. See *Rev. Rul. 75-384, supra; Mysteryboy, Inc. v. Comm'r, T.C. Memo 2010-13*.

You do not satisfy the organizational test of *Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i)*. You were formed to aid financially disadvantaged patients and patient's families who are affected by the costs of THC and CBD medical treatment by providing financial support to cover costs of living and other expenses that the patients may incur. Under federal law, cannabis use is illegal. You are formed for the purpose of providing financial assistance to cannabis users. *Rev. Rul. 75-384, 1975-2 C.B. 204*, states that all charitable organizations are subject to the requirement that their purposes cannot be illegal or contrary to public policy. You were formed for the purpose of providing financial assistance to individuals who are engaged an illegal activity which is contrary to public policy. You will provide funds to patients with demonstrated financial need to help those patients offset the costs of CBD and THC based medications.

Current federal law prohibits the use of cannabis except in limited circumstances; those limited circumstances do not include the use of cannabis for medicinal purposes. The fact that state legalized distribution of cannabis to a limited extent is not determinative because under federal law, distribution of cannabis is illegal. Because you advocate and engage in activities that contravene federal law, you serve a substantial nonexempt purpose.

You do not satisfy the operational test of *Treas. Reg. Section 1.501(c)(3)-1(c)*. Whether an organization operates exclusively in furtherance of an exempt purpose is a question of fact. An organization seeking tax-exempt status under Section 501(c)(3) of the Code carries the burden of proving that it satisfies the

requirements of the statute. See *Harding Hospital, 505 F.2d at 1071*. Only an insubstantial portion of the activity of an exempt organization may further a nonexempt purpose. As the Supreme Court held in *Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. at 283*, the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

You indicated that you will not directly provide THC and CBD based medications to individuals, and you will not provide funding to directly pay for these substances. However, you are providing funding to the users of these substances who may be struggling to pay living and/or travel expenses because of their use of these illegal substances. Furthermore, your financial assistance is only available to users of these substances. Therefore, your payments are indirectly subsidizing cannabis users. Consequently, this illustrates that you have a substantial nonexempt purpose. Your activities are enabling individuals to engage in an activity illegal under federal law.

Your primary activity is to provide financial assistance to individuals who have been prescribed THC and CBD based medications. The distribution of cannabis, is illegal. Federal law does not recognize any health benefits of cannabis and classifies it as a controlled substance. 21 U.S.C. Section 812. Federal law prohibits the manufacture, distribution, possession, or dispensing of a controlled substance. 21 U.S.C. Section 841(a). Congress has "made a determination that marijuana has no medical benefits worthy of an exception" to the general rule that the manufacture and distribution of cannabis is illegal. *Oakland Cannabis Buyers' Coop., 532 U.S. at 493*.

Current federal law prohibits the use of cannabis except in limited circumstances; those limited circumstances do not include the use of cannabis for medicinal purposes. The fact that your state legalized distribution of cannabis to a limited extent is not determinative because under federal law, distribution of cannabis is illegal. Because you advocate and engage in activities that contravene federal law, you serve a substantial nonexempt purpose.

You also do not meet Treas. Reg. Section 1.501(c)(3)-1(d)(ii) which states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest. You are serving the private interests of your board members who have an ownership interest in an LLC who is prescribing CBD and THC based medications. The LLC and its clients are in an advantageous position to benefit from your financial assistance programs because by helping its clients with living expenses, they are more likely to be able to pay for the medications which the LLC prescribes. This precludes exemption under Section 501(c)(3) of the Code.

### **Conclusion**

Based on the facts and information submitted, you are not organized or operated exclusively for exempt purposes. Your primary purpose of providing financial support to individuals who been prescribed THC and CBD based medications not only violates federal law, but also furthers a substantial nonexempt purpose.

### **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