



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

Number: **201941028**
Release Date: 10/11/2019

Date:
July 18, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.04-00, 501.04-06

Dear _____ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(4) 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:
May 9, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

P = State of formation
Q = Date of formation
S = City
U = Restatement of Articles date
V = Ending date

UIL:
501.04-00
501.04-06

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(4). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons stated below.

Facts

You filed Articles of Incorporation with the State of P on Q forming a nonprofit mutual benefit corporation. These stated that your specific purpose "is to provide safely accessible to medical marijuana" in compliance with P law. You restated the Articles on U, converting to a general stock corporation authorized to issue shares of stock, to engage in any lawful act or activity for which a corporation may be organized...."

You stated that you operate a holistic medicine establishment for patients with prescriptions of licensed physicians. Your main activity is the sale of medicinal products to patients. You are open to the general public, operating from a storefront. Other activities, including participation at speaking events, informational sessions and other events you believe will improve the public's perception of alternative medicine, you conduct "on an ad hoc basis."

The medicinal products are sold at retail prices set by the management based on the cost of goods and a reasonable markup. All of your revenue derives from "fulfilment of prescriptions." You did not provide an itemized breakdown of expenses or other distributions.

The storefront location is listed in an internet directory of cannabis businesses, which lists various cannabis products and their prices. We issued a second development letter seeking to confirm whether you sold cannabis products. To date you have not responded to this information request.

According to public records you had active temporary P state licenses to be a medicinal retailer and adult use (aka "recreational use") retailer of cannabis through V. In addition, the S office regulating cannabis recognizes you as a licensed retailer of cannabis, as is shown on the its public website. In order to be licensed by P and S as retailers of cannabis products, there is no need to show that that the requesting party is not operated for profit. Furthermore, there is no meaningful dispute that cannabis is sold in P to the general public by organizations operating for profit. Finally, your own website indicates that your dispensary is open daily from AM to PM and that your inventory consists of cannabis-based products for recreational as well as medicinal use marketed under various brand names and suppliers.

Law

Section 501 (c)(4) of the Internal Revenue Code provides exemption for organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Treas. Reg. Sec. 1.501(c)(4)-1(a)(2)(ii) provides that an organization is not operated primarily for the promotion of social welfare if it "is carrying on a business with the general public in a manner similar to organizations which are operated for profit."

In Revenue Ruling 70-535, 1970-2 C.B. 117, a nonprofit organization entered into agreements with other organizations exempt from Federal income taxes under 501(a) of the Code to manage low and moderate-income housing projects for a fee did not qualify for exemption under section 501(c)(4) of the Code. The organization operated in a manner similar to organizations operated for profit. All of its income was from management fees and was used to meet the expenses incurred in providing these services. Management of the housing projects was the primary activity; other activities were negligible.

Vision Service Plan v. United States, 2006-1 USTC ¶ 50,173 (E.D. California, December 12, 2005), 2005 WL 3406321, affirmed 265 Fed.Appx. 650 (9th Cir. 2008), cert. denied 555 U.S. 1097 (2009), a nonprofit corporation was held by District Court to not be described in section 501 (c)(4), in part, because VSP operated in a manner similar to organizations operated for profit in contravention of regulatory requirement. The plan provided eye care services to subscribers and, through them, to enrollees. The plan claimed that it was a social welfare organization under § 501(c)(4) because it served broad segments of the community through direct services as well as through charity work. The court found that servicing small employers or rural subscribers and enrollees did not equate to promoting social welfare. Although the plan was organized as a non-profit it engaged in cost-cutting measures common to for-profit businesses and paid its executives high salaries and other forms of compensation that were consistent with a for-profit corporation. The plan carried on business with the public in a manner similar to organizations which were operated for profit.

Application of law

According to the information in the administrative record, you do not meet the requirements for recognition of tax exemption under Section 501(c)(4) of the Code, because you are not operated exclusively for the promotion of social welfare. You are not operated exclusively for the promotion of social welfare because you are not primarily engaged in promoting in some way the common good and general welfare of the people of the community, as required by Treas. Reg. Sec. 1.501(c)(4)-1(a)(2)(i). Your primary activity is carrying on a

business with the general public in a manner similar to organizations that are operated for profit, which Treas. Reg. Sec. 1.501(c)(4)-1(a)(2)(ii) excludes from the promotion of social welfare. You are operating in a commercial manner similar to for profit companies. You use promotional policies to enhance sales, you advertise goods and services, your margins are apparently set at a level that enables you to replace merchandise inventory, and you maintain a retail outlet with hours of operation that are competitive with other retail establishments.

Like the organization in Revenue Ruling 70-535, you do not qualify for exemption under Treas. Reg. Sec. 501(c)(4) of the Code because you are carrying on a business with the general public in a manner similar to organizations operated for profit. Your income is solely derived from sales to the general public. Any social welfare activities are an insignificant part of the totality of your activities.

Like Vision Service Plan you are not, by servicing paying members of the general public by fulfilling subscriptions, promoting social welfare. All of your activities are characteristic of a for-profit; you are not even organized as a non-profit, but as a general stock corporation.

In the locality where you operate, retailers of cannabis products do not have to show that they are not for-profit to be licensed to do so by state and local authorities, and indeed there is no meaningful dispute that cannabis is sold in P to the general public by organizations operating for profit.

Conclusion

You are carrying on a business with the general public in a manner similar to organizations which are operated for profit and thus do not operate for an exempt purpose, the promotion of the social welfare of the community. Accordingly, you do not meet the requirements for exemption under Section 501(c)(4) of the Code.

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.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and to the best of my knowledge and belief, the request or the modification contains all relevant facts relating to the request, 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 they haven'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 gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information 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 later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest 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 they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements