



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

Date: August 14, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201945029**  
Release Date: 11/8/2019

UIL Number: **501.03-08, 501.03-33**

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: June 13, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

B = Date

C = Date

D = State

E = State Organization

F = Nationwide Organization

x dollars = Amount

y dollars = Amount

**UIL:**

501.03-08

501.33-00

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)(3). This letter explains the reasons 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 B.

You attest that you were incorporated on C, in the state of D. 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) of the Code, 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) of the Code.

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) of the Code. 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.

In addition, the description of mission or most significant activities in your Form 1023EZ application states in part that you're a high school sports officials association. Subsequently, more detailed information was requested.

You further indicated you are a membership organization of school sports officials. Your primary activity consists of contracting on behalf of your members with local schools in E to provide them with qualified sports officials for such sports as football, basketball, volleyball, and softball.

Specifically, you train your member officials to comply with the state of D standards, and you assign your member officials to officiate games. You also collect payments from the schools on behalf of your members and then distribute the payments to your member officials for their services.

You have two classes of members divided into primary and secondary members. Secondary members cannot serve as commissioners nor can they vote. Your members must be in good standing with E and regularly be approved by your Board of Directors to remain an active member. Members must also pass an annual exam to be assigned to varsity games. Each member must pay x dollars for each sport they officiate and they may be assessed fees for items such as General Liability Insurance. The assessments must be approved by your board.

You also stated that you are governed by a Board of Directors consisting of the President, the Vice President for each sport, the Treasurer and the Booking Agent. The responsibilities of the Booking Agent consist in part of the following:

- Keeps all minutes of all meetings and those of the Board of Directors;
- Receives all applications for membership and presents them to your board;
- Notifies each applicant of their selection as a member and provides them with necessary publications and your training materials

Furthermore, the booking agent receives a salary determined by your board that is written into the contracts that you negotiate with the schools.

To manage your activities, you have a Board of Commissioners which consists of your Board of Directors, and Individual Committee Chairpersons for each sport. The Board of Commissioners is responsible for the evaluation, assignment, recommendations, grievances and education/training of your member officials.

In addition, you submitted your Articles of Incorporation which state you are organized for charitable and educational purposes. They also state in part that you are formed to:

- Maintain the highest standard of officiating;
- Encourage the spirit of fair play and sportsmanship;
- Have available at all times an adequate number of thoroughly trained and capable officials;
- Cooperate with all organizations officially connected with E and F in furthering its interests and ideals;
- Promote better working conditions for officials; and
- Foster friendly relationships among officials.

Besides receiving fees from your members, you charge schools a flat fee of y dollars per team for your services of providing qualified officials. These are paid to the booking agent to process.

#### **Law**

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, 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 such 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 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 of such exempt purposes specified in Section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1 (d)(1)(ii) provides an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

Revenue Ruling 61-170, 1961-1 C.B. 112., holds that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under Section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Revenue Ruling 72-369, 1972-2 C.B. 245 held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations lacked any donative or charitable element and did not qualify for exemption under IRC 501(c)(3). In addition, the provision of such services constituted commercial services. Furthermore, the fact that the services are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of Section 501(c)(3)

of the Code. Finally, the ruling states that an organization is not exempt merely because its operations are not conducted for producing a profit.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under Section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical Section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." Finally, the corporation did not limit its clientele to organizations that were Section 501(c)(3) exempt organizations.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under Section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under Section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in Section 501(c)(3).

#### **Application of law**

You are not as described in Section 501(c)(3) of the Code because you do not meet the operational test as per Treas. Reg. Section 1.501(c)(3)-1(a)(1).

You do not meet the provisions in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are operating for the non-exempt private purpose of providing employment services to member officials. You schedule members to officiate games for which they are qualified, collect payment for them and then pay the members for services rendered. This non-exempt purpose is substantial and precludes you from exemption. In addition, your income is primarily from fees charged to schools for the service of providing them sports officials and from your members in exchange for employment like services. This shows you are operating for a substantial commercial non exempt purpose and also precludes you from exemption under Section 501(c)(3) of the Code.

You are not described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii), because you are a membership organization operating for the private interest of your member officials. The scheduling of games for your members, and the collection of fees on their behalf show that your activities primarily benefit your members.

You are like the organization described in Revenue Ruling 61-170. Your activities are primarily directed to arrange employment for members. In addition, like the organization in the revenue ruling, your membership is open only to specific professionals who meet particular state requirements and maintain specific certifications. Finally, like the organization in the revenue ruling, public support is negligible because fees fund your activities.

You are similar to the organization described in Revenue Ruling 72-369 because the provision of officiating services for negotiated fees to non-profit organizations on a regular basis is a commercial activity. Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose because you rely on fees from the schools that you contract with to finance your operations.

You are similar to the organization in B.S.W. Group, Inc. v. Commissioner, because your activities are serving a commercial rather than a Section 501(c)(3) purpose. For example, you schedule and assign members to officiate games and collect the fees from the games to pay your members. Your income is from the schools who pay fees in exchange for the provision of qualified officials as well as from your members who pay a fee of x dollars per sport for your services. Like the court case, you are operating similar to a trade or business ordinarily carried on by commercial ventures.

Similar to the organization in Easter House v. U.S., you are operating for a business purpose rather than the advancement of charitable or educational activities because you are primarily providing member officials paid employment. By matching members to jobs where they are paid, you are engaging in a business.

### **Conclusion**

Based on the facts submitted, you do not meet the operational test for exemption under Section 501(c)(3). You provide your members officiating assignments, collect service fees on their behalf and you then pay these fees to your members. This shows you are primarily operating for the private interests of your members. In addition, you operate in a commercial manner because you provide a service for a fee and the fees charged are not substantially below cost. This also precludes exemption under Section 501(c)(3) 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](http://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](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements