



Department of the Treasury
Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45201

Release Number: 202012013
Release Date: 4/3/2020
UIL: 501.03-00, 501.03-30

Date: DECEMBER 23, 2019

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.

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:
October 28, 2019
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

P = state
Q = date
R = township/state
s = number
t = number

UIL:

501.03-00
501.03-30

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 have been operating as a social club, specializing in ecology, conservation and preservation of the fish and wildlife in the area for many years. Recently, you wished to be recognized as a non-profit organization and the proceedings began to accomplish that task. You incorporated in the state of P on Q. According to your Articles of Incorporation, you were formed to provide a legal means and location for area youth and adults to engage in outdoor activities, ecological conservation and promote citizenship. Specifically, you are:

Organized to unite and bind together the sportsmen of R: to have a general meeting place, to exchange views, to solve problems confronting members, to harmonize their ideas, to assist and co-operate with the State Game, Fish, and Forestry Departments, to work for and encourage proper legislation relative to game, fish, forests and streams, to oppose political interference with the administration of game and fish laws, to engage in sportsman's activities and sport, to afford the members a place where they may meet and engage in social recreation for their own amusement, none of which purposes contemplate or provide for pecuniary gain or profit, incidentally or otherwise, to the members of the Club.

In addition to containing the same purpose clause, your Bylaws provide that you shall charge an annual dues fee for adult members with free or reduced fees for youth, seniors, and active members of the US armed forces. Members receive a membership card, membership badge and the pass code for entry to the facilities.

Each month the club holds a general meeting with officers, members, and guests. Special meetings are called as needed. The attendees discuss upcoming events and preparation needed for these events. They review prior years' events and approve remedies to solve any problems. Volunteers are scheduled to properly complete the events.

Guest speakers are often scheduled to appear at the monthly membership meeting. P Game, Forestry & Fish Commission officials speak to the members about the conditions of the wildlife, forests, and river environments and ask the membership to assist with improving the conditions for these habitats. The Commissioners discuss threats of disease and insect infestations found in northwestern P. Recently, the Fish Commission educated the members of a fatal disease involving trout at the local fisheries. The members organized a work party and assisted in cleaning up the fisheries and local streams to prevent the spread of the disease.

They also inform the members of upcoming legislation in P that may affect these habitats. Question and answer sessions help to educate the members and promote action to solve the issues. Members are encouraged to communicate with their state representatives to voice their opinions in favor or against current pending legislation.

The club is available to all members every day throughout the year. Members may use the acreage, rifle range, horse shoe pits, skeet and trap facilities at their convenience for their personal recreation. The multitude of events coordinated by the club provide social recreation for all members, both youth and adults. In addition to members' personal uses, your volunteer events provide enormous entertainment and social recreation for participants and volunteer workers. Pride, competition and fellowship keeps your membership strong and increases new membership of the area youth. Member statistics for the current year include approximately s youth members and t adult members.

According to your application, your mission has been and will continue to be the preservation of the ecosystem through education, experience and competition. In the past, you have conducted events such as: kids fish rodeo, pheasant raising program, high school trap league, hunter safety education classes, and sporting clays benefit shoot. These activities account for all your club members' volunteer hours.

The fish rodeo is held annually, right after fishing season begins in your state. The event brings an opportunity for family outings and competition. The children learn how to fish while preserving the ecology around them. Competition promotes good sportsmanship, education and fellowship.

You purchase pheasant chicks to raise. Along with increasing the area's pheasant population, the youth involved in the program learn how to nurture the chicks and improve the habitat that pheasants live in. This program occurs each year at your club facilities, early spring and continues through summer.

Your club hosts and participates in high school trap matches where area youth compete. Education classes and practice times are held before the events. These events promote good sportsmanship, competition, education and fellowship.

Hunter safety classes are held for the area's youth and adults. These courses are available to members and non-members. These classes run each year in early fall, prior to P hunting season, and are required by P to qualify for a hunting license.

The sporting clays benefit shoots are competition style shooting held to benefit a local citizen. Your club is the preferred location for the events in your area. While another organization administers the event, you are responsible for the equipment and grounds for the event to take place. These shoots occur frequently throughout the summer months and promote competition, good sportsmanship and fellowship.

Your club includes over _____ acres of land, on which is located a facility building with electricity, plumbing and heating. Event areas include _____

Your income is derived from gifts, grants and contributions, membership fees, payments for _____, and a small amount of rental income from private parties.

Law

Section 501(c)(3) of the Code provides for the recognition of exemption of organizations that are organized and operated exclusively for charitable, educational, or other enumerated 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) provides 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that 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 such organization is created are broader than the purposes specified in Section 501(c)(3) of the Code.

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)(2) defines the term charitable as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes lessening of the burdens of government.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) defines the term educational as the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community.

Revenue Ruling 66-179, 1966-1 C.B. 139 describes situations under which garden clubs may qualify for exemption under section 501 of the Code. Situation 1 describes an organization that is incorporated as a nonprofit organization to instruct the public on horticultural subjects and stimulating interest in the beautification of the geographic area. In furtherance of these purposes, the organization (1) maintains and operates a free library of materials on horticulture and allied subjects; (2) instructs the public on correct gardening procedures and conservation of trees and plants by means of radio, television, and lecture programs; (3) holds public flower shows of a noncommercial nature at which new varieties of plants and flowers are exhibited; (4) makes awards to children for achievements in gardening; (5) encourages roadside beautification and civic planting; and (6) makes awards for civic achievement in conservation and horticulture. Situation 2 described an organization with the same facts as described in Situation 1 except that a substantial part of the organization's activities, but not its primary activity, consists of social functions for the benefit, pleasure, and recreation of its members. The organization in Situation 1 is organized and operated exclusively for charitable and educational purposes and qualifies for exemption under section 501(c)(3) of the Code. The facts in Situation 2 are distinguishable from those in Situation 1 in that the organization in Situation 2 conducts substantial social functions not in furtherance of any of the purposes specified in section 501(c)(3). Accordingly, the organization does not qualify for exemption under section 501(c)(3). However, because the organization is operated primarily to bring about civic betterment and social improvements and the social functions for the benefit, pleasure and recreation of the members do not constitute its primary activity, the organization qualifies for exemption under section 501(c)(4).

Revenue Ruling 77-366, 1977-2 C.B. 192 states that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. 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 First Libertarian Church v. Commissioner of Internal Revenue, 74 T.C. 396 (1980), the Court stated that the church failed to show that it successfully segregated the clearly social and political aspects of its supper club meetings and its publication from its purpose to further the doctrine of ethical egoism. As the church operated for social and political purposes to more than an insubstantial degree, it fails to qualify for exemption under Section 501(c)(3) of the Code. The court stated that an organization will not qualify for exemption if a non-exempt activity is more than an insubstantial part of its overall activities or if an activity has more than an insubstantial non-exempt purpose. The court explained that "clearly the regulations and cases contemplate that a single activity may be carried on for more than one purpose. If a substantial secondary purpose is not an exempt one, qualification under section 501(c)(3) will be denied."

In Schoger Foundation v. Commissioner, 76 T.C. 380 (1981), it was held that if an activity serves a substantial non-exempt purpose, the organization does not qualify for exemption even if the activity also furthers an exempt purpose.

Application of law

Section 501(c)(3) of the Code and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Your Articles of Incorporation do not include language that limits your purposes to one or more exempt purposes. The purposes for which you were created are broader than the purposes specified in Section 501(c)(3) of the Code, including social and recreational purposes. Accordingly, you do not satisfy the organizational test required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(1)(iv), and you are not organized for exclusively exempt purposes.

You are also not described in Section 501(c)(3) of the Code because you fail the operational test. Specifically, you are not operated exclusively for an exempt purpose as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The facts show you are not operated exclusively for charitable and educational purposes, but for the purpose of sportsman's activities and sport, and to provide a club which your members use at their convenience throughout the year.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides the term "charitable" is used in Section 501(c)(3) of the Code in its generally accepted legal sense and includes relieving the poor and distressed or the underprivileged, combating community deterioration, lessening neighborhood tensions, and eliminating prejudice and discrimination. You did not provide evidence that you limit your activities to the poor and distressed, or exclusively for youth. While you do conduct activities that benefit the area youth, this is incidental to your operation of a social and recreational club for your adult members.

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. While you do provide some educational services, such as hunter safety education classes, there is no evidence you were formed and are operated exclusively for these purposes.

Although an organization may carry on activities that further one or more tax-exempt purposes, it will not be treated as operated exclusively for an exempt purpose if it has a single non-charitable purpose that is substantial in nature. See Better Business Bureau v United States and Schoger Foundation v. Commissioner. Furthermore, more than insubstantial non-501(c)(3) purposes will defeat exemption under Section 501(c)(3) of the Code. See First Libertarian Church v. Commissioner of Internal Revenue (church that operated for social and political purposes to more than an insubstantial degree failed to qualify for exemption under 501(c)(3)); See Rev. Rul. 77-366 (winter cruise with religious and educational purposes, as well as social and recreational activities, not exempt under 501(c)(3)); and See Rev. Rul. 66-179 (garden club that conducts substantial social functions not exempt under 501(c)(3)). As stated above, while you do conduct some activities and serve some purposes that are exempt under Section 501(c)(3) you also serve more than insubstantial purposes that do not qualify under Section 501(c)(3).

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in Section 501(c)(3) of the Code. You are not organized or operated exclusively for exempt purposes as set forth in Section 501(c)(3). By providing members with an opportunity to pursue social

and recreational sports activities, you are operated for a substantial non-exempt purpose. Your operations are not exclusively charitable or educational and resemble those of a social club.

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.

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

cc: