



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

Release Number: **202014017**
Release Date: 4/3/2020
UIL Number: 501.00-00, 501.03-30,
501.35-00, 501.36-01

Date:
January 9, 2020
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:

V = Number
 W = State
 X = Date
 Y = Organization
 Z = Ranch

UIL:

501.00-00
 501.03-30
 501.35-00
 501.36-01

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 IRC Section 501(c)(3)? 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*. You attested that you are organized and operated exclusively to further charitable purposes. You also attested that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3).

The description of your activities provided in your application states that your business is to _____ from _____ and then donate _____ to charity while selling _____ to sustain the operation. The _____ would otherwise end up in a landfill if not utilized. During a review of your Form 1023-EZ, detailed information was requested supplemental to the above attestations.

We obtained a copy of your Articles of Incorporation from the Secretary of State of W and shared it with you. Your Articles confirm that you were formed as a corporation on X in the state of W. Your Articles state that you were formed for the purpose of _____. Your Articles further state that for _____ the will primarily utilize spent _____ originally intended for _____

, but pass the stage of consumer preference in terms of
Your Articles are silent regarding the disposition of your assets upon your dissolution.

You aspire to be a self-sustaining entity that is able to donate and financial assistance to -related charities such as the Y. You plan to maintain a maximum of V. A portion of the produced will be sold to and these funds will be used to sustain your operations. The balance of the product will be donated to the Y.

Your activities will be conducted at Z, a ranch owned by one of your directors. Transactions with Z will be overseen and approved by the board to ensure they are reasonable in nature and comply with ethical concerns. The expenses you pay to Z will be limited to defraying a prorated portion of insurance, land costs, and utilities. An evaluation of prevailing land rates and comparable expenses will be used to make sure that these expenses remain below prevailing market rates to avoid any appearance of impropriety.

Your goal is to produce a product that is in high demand not only for its quality, but also due to the positive social and. You expect your will command a market price roughly double that of typical, due to your surrounding circumstances.

You plan to operate in a more cost-effective manner than other commercial operations, since you plan to have reduced expenses due to the reliance on such as. You, as a nonprofit, would likely be the preferred choice of most, which is a byproduct of the and often thrown away. The potential for their donation to be a tax-deductible charitable contribution to you provides further enticement, as does the good cause.

You will select a more robust, of which will be a cost-saving measure. The you choose will be more. You said the main goal of this enterprise is to provide a template for other small-scale farmers to copy the model of utilizing to convert surplus/waste into a valuable commodity.

You indicated that percent of your total time will be spent on care, percent on administrative items, percent on customer engagement and marketing, and percent on the procurement of.

Your proposed budgets indicate that all your income will come from the sale of the produced. Your expenses are typical of a farm operation, which includes paid to the Z. There is no listing of proposed revenue or to donated to Y or any other -related charities.

Law

IRC Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that to be exempt as an organization described in IRC Section 501(c)(3) 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 will be regarded as “organized exclusively” for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal or state or local government for a public purpose.

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 that accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In Revenue Ruling 73-127, 1973-1 CB 221, it was found that a nonprofit organization that operated a cut-price retail grocery outlet and allocates a small portion of its earnings to provide on-the-job training to hard core unemployed does not qualify for exemption under IRC Section 501(c)(3). The store operated in a similar manner to profit-making businesses in the area, and its gross earnings are used to principally pay salaries and other customary operating expenses incurred in the operation of a grocery store and to expand the operations of the store. It was concluded that the operation of the store and operation of the training program were two distinct purposes sought to be accomplished by the organization through its use of resources. Since the commercial operation of a grocery store is not a recognized exempt purpose and this activity was substantial and conducted on a scale larger than reasonably necessary to conduct the training program, the organization was found not to be exempt.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), it states that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number and importance of truly exempt purposes.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003), the organization operated a conference facility made available primarily to exempt organizations and governmental units. It was found that even though the organization argued that serving non-profit and governmental clients is indicative of an exempt purpose, the organization was found not to be exempt under IRC Section 501(c)(3). This was because it was found to be operating in a manner not significantly distinguishable from a commercial endeavor, and thus furthering a substantial non-exempt purpose. The court also found that the organization's patrons were not limited to exempt entities, or a charitable class.

Application of law

Section IRC 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests to qualify for exempt status. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). You have failed to meet both requirements, as explained below.

Your Articles of Incorporation do not limit your purposes to exclusively IRC Section 501(c)(3) purposes as required by Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i). You also do not meet the provisions of Treas. Reg. Section 1.501(c)(3)-1(b)(4) because your assets are not dedicated to an exempt purpose upon your dissolution. As a result, you do not meet the organizational test and are precluded from exemption under Section 501(c)(3).

While your goal/mission does have an incidental charitable aspect, your primary activity of operating a farm does not constitute a charitable purpose under Section IRC 501(c)(3). Therefore, you have not satisfied the operational test required by Treas. Reg. Section 1.501(c)(3)-1(c)(1).

You are operating similarly to the organization described in Rev. Rul. 73-127. You plan on assisting local _____ with the _____ that you don't sell to _____. However, you indicated that _____ percent of your total time will be spent on the _____ of the _____, and at least _____ percent will be spent on customer engagement, marketing, and brand development. You did not mention how much time you spend conducting charitable activities, if any. The scale of your farm operations is larger than reasonably necessary to accomplish a charitable purpose as described in IRC Section 501(c)(3).

As with the case of the Better Business Bureau of Washington D.C., Inc., operating a business to raise and sell hogs is a substantial non-exempt purpose. As this case outlines, any evidence of a substantial non-exempt purpose precludes exemption under IRC Section 501(c)(3).

You are like the organization described in Airlie Foundation. Your primary purpose is to _____ which will be sold to _____, with the balance of the product donated to charity. Your expenses primarily relate to maintaining and operating the farm. Your proposed expenses did not include charitable giving. Even though your mission involves assisting _____ related charities, your operation of a farm in the manner indicated serves a substantial non-exempt purpose and precludes you from exemption under IRC Section 501(c)(3).

Conclusion

Based on the information provided, you do not qualify for exemption because you are neither organized nor operated exclusively for IRC Section 501(c)(3) purposes. While you may conduct some incidental charitable activities, your primary operation of a farm is a substantial non-exempt purpose. Therefore, you do not qualify for exemption under Section 501(c)(3).

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