



Department of the Treasury  
Internal Revenue Service

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **202014019**  
Release Date: 4/3/2020  
UIL Number: 501.03-03

Date: January 6, 2020

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years: All

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: September 24, 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

**Legend:**

- B = Date
- C = Date
- D = Date
- E = Date
- F = State
- G = Date

- x = Number
- y = Number

**UIL:**

501.03-03

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 were previously granted exemption under Section 501(c)(3) of the Code on B. Your exemption was revoked due to the non-filing of Form 990 for three consecutive years on C. Accordingly, you submitted this new Form 1023EZ, *Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* for retroactive reinstatement on D.

You attest that you were formed as a corporation on E in the state of F. You also 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, otherwise than as an insubstantial part of your activities that in themselves are not in furtherance of one or more exempt purposes, that your organizing document contains the dissolution provision required under Section 501(c)(3) of the Code, and that your organizing document contains the

provisions required by Section 508(e) or that your organizing document does not need to include the provisions required by Section 508(e) because you rely on the operation of state law in your particular state to meet the requirements of Section 508(e).

You attest that you are organized and operated exclusively to further charitable purposes and that you have not conducted and will not conduct prohibited activities under Section 501(c)(3) of the Code.

Specifically, 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

Your Form 1023-EZ was identified for technical review, and detailed information was requested supplemental to the above attestations.

Your Articles of Incorporation from the state of F indicated they were filed on G and show that you are organized to dispense medical cannabis to legally qualified patients. Additionally, there are no provisions in this document for the disposition of assets upon dissolution. Furthermore, your bylaws state you are organized for the charitable and educational purposes of dispensing cannabis medication to qualified patients.

In addition, you responded that you were formed to operate a medical marijuana dispensary for licensed marijuana medical card holders in F. You have not been operational because you have not yet received your license from F. You previously applied for the license, but F only accepted about x of the applicants and you were ranked y. You plan to apply at the next open event which has not yet been scheduled.

Once you receive your license, you will:

- Dispense prescribed Cannabis medications to qualified patients;
- Provide information about these types of medications to the patients and their care givers;
- Help patients understand the instructions their doctors or other health practitioners provide;
- Monitor patient's health and progress to make sure the cannabis medications are working effectively and safely.

You will charge fees for the cannabis which will be based on bloom prices. You will primarily be funded by these fees and your expenses will consist of occupancy expenses and salaries.

Finally, you have a three-person board of directors who will receive compensation once you are operational.

### **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) states 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(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 is not in furtherance of an exempt purpose.

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)(4) holds 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 operation of law, be distributed for one or more exempt purposes.

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.

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 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.

The court case, 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 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 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.

### **Application of law**

You are not 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).

You do not meet the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) because your Articles of Incorporation do not limit your purposes to those described in Section 501(c)(3) of the Code and in fact state you are organized to dispense medical cannabis to legally qualified patients which is in contravention to federal law. In addition, your Articles of Incorporation do not have a provision that dedicates your assets to exempt purposes described in Section 501(c)(3) of the Code upon your dissolution. This also causes you to fail the organizational test per Treas. Reg. Section 1.501(c)(3)-1(b)(4).

Further, 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 are formed to operate a medical marijuana dispensary for licensed marijuana medical card holders in F. Federal law does not recognize any health benefits of marijuana and classifies it as a controlled substance. 21 U.S.C. Section 812. Furthermore, 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 marijuana and cannabis except in limited circumstances; those limited circumstances do not include its use for medicinal purposes. The fact that your state legalized distribution of marijuana and cannabis for medical purposes is not determinative because under federal law, distribution of marijuana is illegal. Because you advocate and engage in activities that contravene federal law, you serve a substantial nonexempt purpose.

While the organization described in Revenue Ruling 75-384 had the goal of educating the public on the benefits of topics such as world peace and disarmament, its primary means of meeting their goals precluded them from receiving exemption under Section 501(c)(3) of the Code. Their activities were deemed to induce or encourage the commission of criminal acts by means of civil disobedience by planning or sponsoring these events intentionally. As the ruling states, highlighting the law of trusts, all charitable trusts (and by implication all charitable organizations) are subject to the requirement that their purposes may not be illegal or contrary to public policy. While medical marijuana may currently be legal in the state you reside, it is currently not recognized as legal by federal law. Therefore, despite any educational or charitable purpose you may plan to achieve through your activities, you are promoting an illegal activity under federal law. Therefore, you are not operating for an exclusive purpose within the meaning of Section 501(c)(3) of the Code.

In addition, in the case of Mysteryboy v. Commissioner, it was found that the organization was encouraging an activity that violated public policy as reflected in federal and state laws. Therefore, the organization was found not to be exempt from federal income tax. Because your activity of operating a medical marijuana dispensary for licensed marijuana medical card holders in F is violating public policy, you do not qualify for exemption under Section 501(c)(3) of the Code.

Also, United States v. Oakland Cannabis Buyers' Cooperative, further reiterates that federal law prohibits the manufacture, distribution, possession, or dispensing of a controlled substance, except for government-approved research projects. You have not provided any evidence that you are conducting, or promoting, a program of this kind. Therefore, you do not qualify under Section 501(c)(3) of the Code.

### **Conclusion**

Based on the information provided, you do not qualify for exemption because you are not organized and operated exclusively for purposes described in Section 501(c)(3) of the Code. You fail the organizational test because you are organized for purposes that are deemed illegal under federal law. Furthermore, you fail the operational test because you are engaging in an activity that is considered illegal by federal law. Therefore, you do not qualify for 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